

72102

CAUSE NO. 12,764

THE STATE OF TEXAS

VS.

BILLY JOE WARDLOW

§ IN THE DISTRICT COURT OF
§
§ TITUS COUNTY, TEXAS
§
§ 76TH JUDICIAL DISTRICT

STATEMENT OF FACTS

VOIR DIRE EXAMINATION

November 15, 1994

VOLUME 20 of 43 volumes

FILED IN
COURT OF CRIMINAL APPEALS

OCT 11 1995

Troy C. Bennett, Jr., Clerk

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November 15, 1994

VOLUME 20 of 43 volumes

Before Honorable Gary R. Stephens

Judge by Judicial Assignment

(Venue changed from Morris County, Texas)

APPEARANCES

ATTORNEYS FOR THE STATE OF TEXAS:

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and

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4 P.O. Box 448
5 Mt. Pleasant, Texas 75456-0448

6 and

7 MR. LANCE HINSON
8 Law Offices of Danny Woodson
9 P.O. Box 399
10 Mt. Pleasant, Texas 75456-0399
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1 On the 15th day of November, 1994, the
2 above-entitled and numbered cause came on for hearing
3 before said Honorable Court, Judge Gary R. Stephens of
4 Midlothian, Texas, serving by judicial assignment in the
5 District Court of Titus County, Texas, on change of venue
6 from Morris County, Texas, and the following proceedings
7 were had:

8
9 (The following occurred outside the
10 presence and hearing of any potential juror:)

11
12 THE COURT: Okay. Let's get
13 on the record.

14 Let the record reflect no juror is
15 present.

16 Mr. Townsend, I understand that you and
17 Mr. Old have agreed to excuse juror 32, juror sheets,
18 "S H E E T S", is that right?

19 MR. TOWNSEND: That's correct,
20 Your Honor.

21 THE COURT: Mr. Old, do you
22 agree?

23 MR. OLD: That's correct, Your
24 Honor.

25 THE COURT: Mr. Wardlow, do

1 you agree?

2 THE DEFENDANT: Yes, Your
3 Honor.

4 THE COURT: Mr. Sheets is
5 excused.

6 Tell Mr. Sheets he may go home and bring
7 out Isbell.

8
9 (The following occurred in the presence
10 and hearing of the potential juror:)

11
12 THE BAILIFF: Watch your step
13 as you go up there, don't trip.

14 THE COURT: Right up here,
15 ma'am.

16 THE POTENTIAL JUROR: Okay.

17
18 PATRICIA ANN ISBELL, Potential Juror #219,
19 was called as a Potential Juror and, having been
20 previously sworn by the Court, testified as follows:

21
22 THE COURT: How are you doing
23 this morning?

24 THE POTENTIAL JUROR: Okay.

25 THE COURT: Ma'am, would you

1 please state your name for the record?

2 THE POTENTIAL JUROR: Patricia
3 A. Isbell.

4 THE COURT: This is juror 33.

5 Ma'am, I am Gary Stephens, I am
6 presiding over this trial.

7 Of course you know you are here today
8 so we can talk to you about some of the answers in your
9 questionnaire and talk to you about the principles of law
10 involved in a capital murder trial.

11 There are two assistants or -- not "two
12 assistants", there's one Assistant District Attorney and
13 one District Attorney working on this case.

14 The District Attorney is Richard
15 Townsend and he's from Morris County.

16 MR. TOWNSEND: Hello.

17 THE COURT: The person
18 assisting him is Randy Lee, he's not with us this
19 morning.

20 We have two Defense Attorneys, Mr. Bird
21 Old, III.

22 MR. OLD: Good morning.

23 THE POTENTIAL JUROR: Good
24 morning.

25 THE COURT: Mr. Lance Hinson.

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MR. HINSON: Good morning.

THE COURT: Next to Mr. Hinson
the person charged, Billy Joe Wardlow.

Now, ma'am, the lawyers are going to
talk to you as I said about some of your answers, they
are also going to talk to you about the law and see
whether or not you can follow the law that applies in
this type of a case.

In order to be a juror you must be able
to understand and follow the law. You don't necessarily
have to agree with the law, if you disagree with some
aspect of our law but you can still follow the law you
are qualified.

But we need to know more about whether
you can or can't follow the law. We want to know what
you think about our law, we want to know what your
opinions are of our law.

We have found that most people can
follow the law but that doesn't necessarily mean they are
appropriate persons in a death penalty case. You may be
an excellent juror in some other case but a death penalty
case may not be the appropriate task for you so we want
you to share your opinions with us and as lawyers the
only way we know to get those opinions is to ask lots of
questions.

1 There's no right or wrong opinions, your
2 answers are your answers and your opinions are your
3 opinions, that's what we are concerned with, you don't
4 have to prove you are a good citizen by agreeing with our
5 law, you have already proved your citizenship by
6 appearing for jury duty and filling out the questionnaire
7 and coming back in. In this country you are absolutely
8 free to agree or disagree with the laws, we just want to
9 know what your opinions are.

10 We may talk to you for 20 or 30 minutes
11 or we may talk to you for two or three hours.

12 We haven't gone three hours yet but
13 sometimes the selections do take awhile and the reason
14 is just sometimes it's harder to get some people's
15 opinions than others so what we want you to do is just
16 open up and share those opinions.

17 If you don't understand the question get
18 the lawyer to repeat it. If there's something you think
19 we need to know about you that we don't ask just give us
20 that information.

21 Just think of it this way, ma'am, if you
22 were on trial and there's something about a juror that
23 you think would be important to you and it applies to you
24 then tell us because that's all any of us want is 12 fair
25 people that can do whatever the appropriate thing is

1 after hearing evidence.

2 Mr. Townsend.

3
4 VOIR DIRE EXAMINATION

5 BY MR. TOWNSEND

6
7 Q Ms. Isbell, I'm Richard Townsend, I represent
8 the State in this case along with Randall Lee and Randall
9 Lee is not here.

10 I want to talk to you about some
11 different areas of the law and like the Judge says,
12 there's really no right or wrong opinions, we are just
13 concerned what your opinions are, what your feelings are
14 about certain aspects of the law.

15 And I want to go into first on your
16 questionnaire toward the end of the questionnaire -- I'm
17 sure you don't remember everything you put down here but
18 you mentioned a back problem if you sit too long or stand
19 too long?

20 A Yes.

21 Q I think the Court would probably take a break
22 about every hour or hour and a half or something like
23 that, would that cause you any undue problem?

24 A No. As long as I don't stand a long time.

25 Q Okay. It's mainly just if you have to stand

1 a long time?

2 A Yes, sir.

3 Q Like you may have had to do when we had the
4 first section?

5 A Right. Standing -- standing up all day makes
6 my back hurt.

7 Q All right. And I notice that you wrote on the
8 questionnaire that you just lost your mother and that was
9 -- would have an effect on your ability to keep your
10 attention on things.

11 When did you lose your mother?

12 A Almost six months ago.

13 Q Okay. Do you know -- you know we won't ask you
14 or expect you to be able to put that out of your mind but
15 in order to serve on the jury you would need to, you
16 know, concentrate on the task that a juror has and not
17 let that distract you to the point that you couldn't
18 concentrate on the trial.

19 Do you think that would be something
20 that you could do?

21 A It would be kind of hard because when I sit
22 still my mind wanders every time. I start thinking about
23 my mother. And my grandmother now is real ill.

24 The day of my mother's funeral we found
25 out she has had cancer and she has gotten worse, we have

1 been going over everyday seeing about her.

2 They have only given her about a month
3 to live.

4 Now is a pretty bad time in my life.

5 Q It's your grandmother?

6 A My grandmother.

7 Q Really what I think it all boils down to, we
8 can't answer this question for you and we don't know how
9 you feel and the only way I know to ask it is have you
10 ever served on a jury before?

11 A No.

12 Q Even though you haven't served on a jury I
13 think you understand that you are going to be listening
14 to evidence and you need to be able to listen to this
15 evidence and consider all of it.

16 And do you believe considering your
17 personal problem that you could do that or do you believe
18 that you couldn't do it?

19 And it's just -- you are the only one
20 that can make that decision.

21 A Well, I don't know right now at this point in
22 my life, I don't know if I could but -- because that's
23 why I went back to work, to try to get my mind off it and
24 working really hasn't helped that much. I still wander
25 off and I kind of tune everybody out.

1 Q What kind of work do you do?

2 A I am a florist.

3 Q Are you able to do your job successfully?

4 A Yeah.

5 Q Okay.

6 THE COURT: Excuse me just a
7 minute, Mr. Townsend.

8 Ma'am, in a trial of course there will
9 be evidence in the form of people sitting on that stand
10 and testifying, I can understand when you are not busy
11 listening or concentrating your mind might wander, you
12 might be working on a floral arrangement and your mind
13 would wander, do you believe it would be the case if
14 someone were testifying, do you think that you could
15 become distracted and not listen to their testimony or
16 if there's something to focus on to put your problem
17 aside and focus on what is going on?

18 THE POTENTIAL JUROR: I am
19 really bad about kind of tuning everything out.

20 THE COURT: I think if
21 something is going on you are afraid that you might tune
22 out something that is said?

23 THE POTENTIAL JUROR: I'm
24 afraid I wold, especially at this point in my life.

25 THE COURT: The trial is going

1 to be the first of the year and you said you don't think
2 your grandmother has more than a month, that would be
3 about that time frame.

4 THE POTENTIAL JUROR: Yes.

5 THE COURT: Excuse me, Mr.
6 Townsend.

7 I just wanted to answer that one
8 question about the time frame.

9 MR. TOWNSEND: Approach the
10 bench?

11 THE COURT: You may.

12 Ma'am, would you step outside the door
13 for just a minute and let me have a talk with these
14 lawyers?

15 THE BAILIFF: Watch your step
16 there.

17
18 (The following occurred outside the
19 presence and hearing of the potential juror:)

20
21 MR. OLD: We agree, Your
22 Honor.

23 THE COURT: On the record.

24 Mr. Townsend, do you agree to excuse
25 juror 33, Isbell?

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MR. TOWNSEND: Yes, Your Honor.

THE COURT: Do you agree, Mr. Old?

MR. OLD: Yes.

THE COURT: Mr. Wardlow?

THE DEFENDANT: Yes.

THE COURT: Mr. Hinson, do you agree?

MR. HINSON: Yes, Your Honor.

THE COURT: I thought I might include you there.

Tell her that we will let her go and appreciate her coming down.

Bring in our next one.

THE BAILIFF: That's all we have got, Your Honor.

We have got another one at 10:30.

(Recess.)

(The following occurred outside the presence and hearing of any potential juror:)

THE COURT: All right. If

1 everybody is in place let's bring her in.

2
3 (The following occurred in the presence
4 and hearing of the potential juror:)

5
6 THE BAILIFF: Step all the way
7 right around here and then right up there. Have a seat
8 right up there. No problem.

9
10 TERESA DIANE COKE, Potential Juror #447,
11 was called as a Potential Juror and, having been
12 previously sworn by the Court, testified as follows:

13
14 THE COURT: Good morning,
15 ma'am. How are you doing?

16 THE POTENTIAL JUROR: Fine.

17 THE COURT: Go ahead and take
18 your seat.

19 We kind of rushed your interview on you
20 this morning, I hope we didn't inconvenience you too much
21 but the first couple of people we have didn't last very
22 long.

23 Ma'am, I'm Gary Stephens, I'm the one
24 presiding over the trial and jury selection.

25 For the record you are "Teresa Coke?"

1 THE POTENTIAL JUROR: Yes,
2 sir.

3 THE COURT: This is juror
4 number 34.

5 We have two District Attorneys that are
6 representing the State of Texas, we have present what we
7 call the "lead counsel", the one that will present the
8 case and that is Mr. Richard Townsend from Morris County,
9 we have two Defense Attorneys, Mr. Bird Old, III.

10 MR. OLD: Hello.

11 THE COURT: Mr. Lance Hinson.

12 MR. HINSON: Good morning.

13 THE COURT: Next to Mr. Hinson
14 the person charged, Billy Joe Wardlow.

15 The other District Attorney involved in
16 this case, "Randy", "Randall Lee" is from Cass County,
17 he's not with us this morning.

18 Now, Ms. Coke, the lawyers have read
19 your questionnaire and they are familiar with your
20 answers, they are going to discuss some of those answers
21 with you and they are also going to talk to you about the
22 principles of law involved in a death penalty case.

23 You will be asked a lot of questions,
24 frankly the answers will let us know whether or not to
25 put you on the jury.

1 In order to be a juror you must be able
2 to follow the law. You don't even have to agree with the
3 law, if you disagree with some aspect of our law but you
4 can still follow the law you are qualified but if you
5 disagree to some aspect of our law to such an extent and
6 can't follow the law you are not qualified.

7 So we will explain the law to you and
8 ask you whether or not you can follow the law.

9 But the ability to follow the law,
10 ma'am, doesn't necessarily mean that you would be an
11 appropriate person in a death penalty case so we want to
12 know more than "Yes, I can" or "No, I can't follow the
13 law."

14 I want to know what you think about the
15 law, think about the issues that we will talk about, we
16 may use examples to illustrate some of the issue or
17 illustrate laws and if we do use an example, ma'am, I
18 want you to understand that the examples do not relate
19 to Mr. Wardlow or his case, any fact about this case will
20 come out in trial. That's what the trial is for. So if
21 we are discussing, if we make up an example to illustrate
22 a point it has absolutely nothing to do with this case,
23 you are not being qualified as a juror for this specific
24 case, you are being qualified as a juror in a capital
25 murder case so the comments will be general comments

1 without specific reference to this particular person.

2 Ma'am, the trial itself will not begin
3 until after the first of the year. When it does begin
4 I anticipate the trial will last two weeks, it could go
5 into three weeks but not too likely.

6 Do you know of any reason you could not
7 serve for a two week period on this jury say the first
8 and second week of January of next year?

9 THE POTENTIAL JUROR: Not that
10 I know of except for it will be difficult with my job
11 because I teach and it would be very difficult to find
12 a substitute to do what I need to do.

13 THE COURT: So other than work
14 problems you know of no problem that you could not serve?

15 THE POTENTIAL JUROR: That's
16 correct.

17 THE COURT: Ma'am, if there's
18 something you don't understand get us to clarify it, if
19 you think there's anything that we need to know about
20 you let us know.

21 Most people we talk to frankly just
22 don't end up on a capital murder type jury, we won't know
23 whether you are going to be on this jury, not until
24 probably toward the last part of the week but you will
25 be notified either Friday or Monday whether or not you

1 will be on the jury.

2 Mr. Townsend.

3

4

VOIR DIRE EXAMINATION

5

BY MR. TOWNSEND

6

7

Q Ms. Coke, I'm Richard Townsend, I represent
8 Morris County and the State of Texas in this case and I
9 want to reiterate to you what the Judge said in that
10 there are no right or wrong answers to these questions,
11 we just want you to tell us how you feel and what you
12 think.

13

If you don't understand anything I have
14 asked be sure and ask me to restate it or if I mumble or
15 something like that.

16

17

18

19

20

21

We are seeking the death penalty in this
case and I have read your questionnaire and I understand
or I believe I understand your feelings about the death
penalty in that you said that you felt it was appropriate
in some murder cases and you could return a verdict in
a proper case which assessed the death penalty.

22

23

And you also said that you were in favor
of a life sentence under the proper circumstances.

24

25

That's the sort of questions that we are
concerned about in a death penalty case because in Texas

1 if the death penalty is involved in a case in a capital
2 murder as it is here if a person is found guilty of
3 capital murder they don't automatically receive the death
4 penalty, they could, depending on what the jury decides,
5 they could receive a life sentence or the death penalty
6 after they have heard all the evidence and made their
7 decision.

8 And what we have to have going in are
9 those kinds of jurors who can keep an open mind all the
10 way through the trial and only at the end of the trial
11 and after they have heard all the evidence then decide
12 whether the appropriate punishment should be a life
13 sentence or the death penalty.

14 Do you feel that you could do that?

15 A Yes, sir.

16 Q Ms. Coke, do you know of any reason why, like
17 I said, I represent the State and of course our interest
18 is that we are seeking the death penalty in this case,
19 do you know of any reason why if we gave you what you
20 felt was an appropriate case for the death penalty, do
21 you know of any reason why you couldn't personally vote
22 that way?

23 A I have never been faced with that problem
24 before. It's easy to say "It would be easy to do" but
25 I don't know.

1 Q Ma'am, I think clearly it's not something that
2 is easy to do but my question is not so much "Is it easy
3 to do", my question is; if you felt like the facts and
4 evidence were appropriate for it could you do it whether
5 it was easy or not?

6 A After a lot of prayer if I consciously thought
7 that it was the right thing to do, yes, I could do it.

8 Q Okay. Ms. Coke, in Texas there are two basic
9 types of murder that we talk about. I want to talk to
10 you about those a little bit, one is what I call "plain
11 murder" or non-capital murder, the most a person can be
12 punished for this is 99 years to life in the
13 penitentiary.

14 On the other hand that murder is where
15 someone was intentionally caused -- intentionally or
16 knowingly caused the death of another individual, that
17 is to say without a legal justification or excuse, when
18 I say that I mean it wasn't self defense or it wasn't an
19 accident, they intentionally caused another person's
20 death.

21 On the other hand the other type murder
22 is what we call "capital murder" and that -- that is
23 where you have this plain murder plus something else and
24 that plus something is the murder was a police officer
25 or fireman, the murder was a multiple type murder type

1 situation, the murder was done during the commission of
2 a robbery or burglary or rape or kidnapping, something
3 of that nature.

4 If you will, there is a sheet of paper
5 up there, I think it's marked "Exhibit 3" and it's the
6 indictment in this case.

7 THE COURT: That's it.
8 (Indicating)

9 MR. TOWNSEND: If you will
10 just read that to yourself and I will talk to you about
11 it.

12 THE POTENTIAL JUROR: Okay.

13 Q (BY MR. TOWNSEND) Okay. Ms. Coke, can you see
14 where if we were able to prove everything that is in that
15 indictment that rather than just being a plain murder
16 that would be a capital murder because it has that murder
17 plus something else that I talked about and the plus
18 something else in this situation is a robbery?

19 A Yes.

20 Q Okay. So what we are seeking in this case is
21 to prove that it is a capital murder and to seek the
22 death penalty what we have to have in the way of jurors
23 are those people who can keep an open mind throughout the
24 trial and not have their mind closed.

25 So let's assume that the person is found

1 guilty of capital murder, we have to have the type juror
2 who can keep an open mind.

3 You know, I have heard jurors say,
4 "Well, if I find the person guilty of capital murder I
5 am automatically going to give him the death penalty."

6 You see, they are not qualified jurors
7 because they have already decided what the punishment
8 should be before they have heard all the evidence.

9 On the other hand some jurors might say,
10 "Well, I just don't believe in the death penalty at all,
11 I would never give anyone the death penalty."

12 Again, their mind is made up on the
13 punishment before they have ever heard the evidence.

14 Do you believe that you could keep an
15 open mind about what the proper punishment should be
16 until you heard all the evidence and then make that
17 decision?

18 A Yes, sir.

19 Q Okay. In a capital murder case the evidence
20 is presented in sort of two phases, one is the guilt or
21 innocence phase and that's where you are going to hear
22 evidence that basically helps you to determine the guilt
23 or innocence, "Did he do it" and at that point in the
24 trial you are not going to be concerned with what the
25 proper punishment should be. You will just strictly be

1 concerned with whether the person is guilty or not
2 guilty.

3 After that determination is made if the
4 defendant is found guilty then there will be further
5 evidence presented during the punishment hearing and at
6 that punishment hearing you will hear additional evidence
7 but this evidence won't be the guilt or innocence of the
8 defendant because you have already decided that he was
9 guilty or you wouldn't be hearing the punishment hearing,
10 this is going to be evidence that would tend to help you
11 in your decision toward what you think the proper
12 punishment should be.

13 It could be evidence of -- and keep in
14 mind, Ms. Coke, when we are talking to you we are not
15 specifically talking to you about this trial but just
16 capital murder trials in general -- the kind of evidence
17 you might hear, oh, the defendant's religious background,
18 family history, mental retardation if there was any such
19 thing involved, alcohol or drug abuse, psychological
20 testimony, testimony of prior acts of criminal activity
21 by the defendant or bad acts by the defendant.

22 You might hear just almost anything.

23 And after you have heard all that then
24 you are going to decide whether the proper sentence
25 should be a life sentence or the death penalty.

1 In making that decision you are able to
2 consider that evidence that you heard during the guilt
3 or innocence phase, you don't have to throw it away, you
4 can go back and consider it also but you have also got
5 to be able to consider that evidence that you hear during
6 the punishment phase.

7 Do you believe if you found the
8 defendant guilty of capital murder that you could listen
9 and consider all that evidence during the punishment
10 phase before making your decision?

11 A Yes, sir.

12 Q Okay. There is a flow chart up there, what I
13 call the "flow chart", looks like this.

14 And it kind of explains to us a little
15 bit about how a capital murder trial works. And I will
16 just start at the top and go over this, most of this I
17 have already been over with you but first you go to guilt
18 or innocence phase and at that point you are going to
19 hear evidence as to whether the defendant is guilty or
20 not guilty.

21 If the defendant is found not guilty the
22 trial is over, everybody goes home.

23 On the other hand if he's found guilty
24 you go to the second phase, that second phase is the
25 punishment phase in the middle of the page there.

1 Then you are going to hear more evidence
2 and that's the kind of evidence I talked to you a moment
3 ago, that might be evidence of a lot of different
4 varieties and types of evidence there.

5 Then you are going to vote on Special
6 Issue #1 and Special Issue #1 is a question that the jury
7 is going to answer either "Yes" or "No."

8 If the jury answers "No" to that
9 question then -- and I will talk to you in a little bit
10 about what that question is but if the jury answers "No"
11 to that question then the defendant is automatically
12 going to receive a life sentence.

13 If the jury answers "Yes" then you to
14 go to Special Issue #2.

15 Special Issue #2 is another question,
16 if the jury answers that question "No" the defendant will
17 receive the death penalty, if the jury answers that
18 question "Yes" the defendant will or would receive a life
19 sentence.

20 So actually what the jury is doing is
21 the jury is not required to say, "Okay, let's give him
22 a life sentence" or "Okay, let's give him the death
23 penalty."

24 What you are really doing is you are
25 asked to answer two questions. Now, you are going to

1 know what the result of those answers are, you are going
2 to know if Number One is "Yes" and Number Two is "No" the
3 defendant is going to receive the death penalty but if
4 you answer them any other way then the defendant would
5 receive a life sentence.

6 Are you with me so far?

7 A Yes.

8 Q There's a sheet up there that is marked
9 "Special Issues" on the top.

10 Pull that out and read Special Issue #1
11 and then we will talk about it.

12 Okay. Special Issue #1 basically talks
13 about the future and dangerousness of the defendant, is
14 that about the way you assess that? (Indicating)

15 A Yes.

16 Q Okay. I want to point out a few things about
17 that to you, the first thing is that word "probability."

18 In Texas the law defines "probability"
19 as being "more likely than not" or just -- just more than
20 50/50, you know, 51/49 or more basically if you want to
21 put it into numbers.

22 Is "more likely than not", would that
23 be about like your personal definition of "probability?"

24 A Yes.

25 Q Would you be able to follow that and use that

1 term or that definition for "probability" that --

2 A Are you saying "49 to 51?" Are you saying --

3 Q Well, "more likely than not?"

4 A Yes.

5 Q When I say "51/49", that is just kind of a
6 broad -- kind of a numerical way to look at it.

7 The second thing I want to call your
8 attention to toward the end of the second line it talks
9 about "criminal acts of violence."

10 Of course the defendant is charged with
11 capital murder and we are required to prove to you beyond
12 a reasonable doubt and that is something that I should
13 have noted just like in the guilt or innocence phase
14 where we are required to prove the defendant guilty
15 beyond a reasonable doubt the State also has to prove to
16 you beyond a reasonable doubt that it's more likely than
17 not that the defendant would commit a criminal act of
18 violence in the future.

19 Criminal acts of violence, while the
20 defendant is charged with capital murder there are many
21 other criminal acts of violence besides murder; assault,
22 rape, attempted murder, you know, several other type
23 crimes that are acts of violence even though they are not
24 murder.

25 Of course there are crimes that are

1 considered "acts of violence", theft, forgery, those
2 sorts of things while they are criminal they are not acts
3 of violence.

4 Are you kind of with me on that?

5 A Yes.

6 Q The last word in the third line there is the
7 word "society" and what that means is that -- "society"
8 to you and me is just people walking around I think but
9 the way the law looks at "society" that includes not only
10 walking around on the street, not only in our homes and
11 in our communities, also in the penitentiary, that's a
12 part of society, too, because after all those are people
13 also. The inmates are part of society, the guards are
14 part of society, the nurses and doctors and dentists and
15 whoever might be there are part of society as well.

16 So we are not required to prove to you
17 that the defendant would commit a criminal act of
18 violence in the future in the penitentiary or out of the
19 penitentiary, just that it would be probable that it
20 would happen somewhere he would commit some criminal act
21 of violence somewhere.

22 After you have heard the evidence during
23 the guilt or innocence phase then before you vote on
24 Special Issue #1 you are going to hear all that evidence
25 that I talked about during the punishment hearing.

1 After hearing all that evidence then you
2 kind of go back and reconsider that evidence that you
3 have heard during the guilt and innocence phase and
4 reconsider all that evidence that you have heard during
5 the punishment phase then vote "Yes" or "No" on Special
6 Issue #1.

7 Then you go to Special Issue #2, if you
8 will read that issue over and then we'll talk about it.

9 Okay. Ms. Coke, Special Issue #2,
10 remembering that you don't get to Special Issue #2 unless
11 the jury voted "Yes" on Special Issue #1, if you voted
12 "No" on that Special Issue then the defendant would
13 automatically receive a life sentence.

14 Let's assume for what we are discussing
15 today that you voted "Yes", the jury voted "Yes" on
16 Special Issue #1 and that you do believe beyond a
17 reasonable doubt that the defendant is likely to be
18 dangerous in the future then you look at Special Issue
19 #2.

20 Special Issue #2 basically, although
21 there's a lot of legal wording in there, it basically
22 boils down to I believe "Is this a death penalty type
23 case, is this a death penalty type defendant", and you
24 go back and again just like you did on Special Issue #1,
25 you go back to the very beginning of the trial and you

1 reconsider all that evidence that you have heard and
2 decide at that point "Is there something in here,
3 something here that is sufficiently mitigating to me that
4 makes me feel that this defendant should receive a life
5 sentence rather than the death penalty?"

6 That term "mitigating" there is defined
7 there for you where it says it's evidence that the jury
8 might regard as reducing the defendant's moral
9 blameworthiness so it's not evidence that would excuse
10 his behavior but just simply evidence that you believe
11 that would reduce the blame that he should be held
12 responsible for.

13 And before the -- and you will note
14 before the word "mitigating" it says "sufficient
15 mitigating circumstances" so that means -- just any
16 mitigating circumstance is not enough but it should be
17 sufficient in your mind that you think it should reduce
18 his blame enough to give him a life sentence rather than
19 the death penalty.

20 Now, when you talk about "mitigating
21 evidence", that is evidence that you might hear from this
22 side of the table or you might hear from that side of the
23 table, it might be evidence that one of our witnesses
24 gave you that you felt was mitigating, it might be
25 evidence that one of their witnesses gave that you felt

1 was mitigating, it could be evidence -- what one juror
2 might think is "mitigating" another juror might not.

3 For instance, if the facts of the case
4 show that the defendant committed the crime while he was
5 intoxicated, that might be -- one juror might look at
6 that and say, "Well, you know, if he hadn't been
7 intoxicated he probably wouldn't have done it so I'm
8 going to think that reduces his blame" while another
9 juror might say, "Well, you know, he's responsible for
10 his behavior. The fact that he was intoxicated doesn't
11 make any difference, it's still his behavior."

12 In any other type evidence, if you talk
13 about the defendant's age, if you talk about his family
14 background, any of that sort of thing so something that
15 different jurors might think of in different ways.

16 But that's the sort of evidence that you
17 would be hearing -- another example might be if you knew
18 or found from the evidence that the defendant was
19 retarded might make a difference to some juror, it might
20 not, it depends on the individual and how they feel about
21 it.

22 But the important part to remember is
23 that in Special Issue #2 you are going to be looking at
24 all types of evidence possibly and we are not asking you
25 "Will you consider this important" or "Will you consider

1 this important" but to be a fair and impartial juror you
2 have got to be able to keep an open mind and listen and
3 consider all that evidence.

4 Now, once you have listened to it and
5 considered it it's up to you to decide whether it's
6 important or unimportant or believable or unbelievable.
7 But the important part is can you keep an open mind and
8 listen and consider all the evidence before making your
9 decision?

10 A Yes, sir. I can keep an open mind but you are
11 saying that it's still based on my opinion whether or not
12 the evidence should be swayed one way or another, for
13 instance if to take into effect his family background or
14 whatever, that's up to me?

15 Q Right. Right.

16 And when you say "It's up to your
17 opinion" that is really particularly true with Special
18 Issue #2.

19 Now, as to guilt or innocence the State
20 has to prove that to you beyond a reasonable doubt, the
21 same way with Special Issue #1 but Special Issue #2, that
22 is basically what Special Issue #2 is, strictly your
23 opinion and we are not -- I am not trying to and the
24 other side when they question you, we are not trying to
25 get you to look in and say -- if there's evidence

1 presented of intoxication, for instance, just use that
2 as an example; if there's evidence presented of
3 intoxication will you promise us that you will consider
4 that and consider that to be mitigating?

5 That's not what I'm trying to say. What
6 I'm trying to say is that we have got to have jurors who
7 will keep an open mind and listen to the evidence,
8 consider the evidence and then decide whether that
9 evidence is important in your mind or not and not just
10 automatically say, "Okay. If they are going to talk
11 about the defendant's family background I don't think
12 that is important and I'm not even going to listen to it
13 and I'm not going to consider it at all."

14 Do you see what I'm saying?

15 For instance, some people have the
16 "prejudice" you might say against psychologists and if
17 a psychologist got up there on the witness stand and that
18 person might say, "Well, I don't care what that guy says
19 I'm not listening to him and I'm not paying any attention
20 to it."

21 See, they are not listening and
22 considering all the evidence.

23 So, we are not trying to get you to say
24 that you would think anything was important or not
25 important, that's up to you, but just that you would

1 listen to it before making your decision, you would
2 consider it?

3 A Yes, sir. I could do that.

4 Q You could do that?

5 Okay. Now, I want to emphasize again
6 that we expect you and it's your job and you should if
7 you are selected on the jury and it comes to your own
8 opinion on Special Issue #2, you know that should be your
9 opinion as to what -- whether you felt like any of that
10 stuff was sufficiently mitigating or not, as long as you
11 are just willing to listen and consider it all before
12 making your decision.

13 A Yes.

14 Q Do you think we are clear on that?

15 A Yes.

16 Q Okay. Another thing when looking at the
17 capital murder case when you are deciding the answer to
18 Special Issues #1 and Issue #2 as I would expect the
19 Court would instruct you that in a capital murder case
20 in this particular capital murder case if the Defendant
21 is found guilty of capital murder and given a life
22 sentence he would have to serve 35 calendar years in the
23 penitentiary, at that time he would become eligible for
24 parole.

25 Now, it does not mean that he would

1 receive parole at that time, he could receive parole then
2 or he might never receive parole but he would be eligible
3 for parole at that time.

4 And I think the Court would instruct you
5 that in deciding your answer to Special Issue #1 and
6 Special Issue #2 that you are not to consider parole in
7 any way.

8 Now, when I say that what I mean is we
9 don't expect you to put it out of your mind, we know that
10 people can't just put things out of their mind but we do
11 -- you know, you are required to set that aside and not
12 use that in deciding your answer to Special Issue #1 or
13 Issue #2. Basically you are just to consider a life
14 sentence as a life sentence and the death penalty the
15 death penalty and base your answer to Special Issue #1
16 and Issue #2 on the evidence that is presented to you and
17 not hold it against the defendant or consider in any way
18 the fact that he might at some point get parole.

19 Can you put that aside and not use that
20 in determining your answer to Special Issue #1?

21 A That is a hard question for me.

22 I feel that 35 years is not enough for
23 a life sentence and how do you completely put that out
24 of your mind?

25 You know, I would try to do it but as

1 you said it would still be there.

2 Q Well, Ms. Coke, I think what you know what I
3 was saying is we realized that you or no one else can put
4 that out of your mind and we don't expect you to be able
5 to do that. What -- what a qualified juror has got to
6 be able to do, though, is to set that aside while they
7 are making their decision and because after all we are
8 not telling you that he would be released in 35 years,
9 we are telling you that, you know, at the end of 35 years
10 he would be eligible for parole.

11 The Parole Board could decide to release
12 him at some point after that or they might decide never
13 to release him. That's not for your consideration.

14 We don't expect you to put that out of
15 your mind but in making your decision as to what the
16 appropriate answer should be to Special Issue #1 or
17 Special Issue #2 you have got to be able to decide those
18 Special Issues based on the evidence that you have been
19 presented with all throughout the trial and base your
20 decision on that and not on something like some
21 possibility of parole out there in the future.

22 And what I'm asking you is as to Special
23 Issue #1 could you not -- I'm not asking you to put it
24 out of your mind but could you just set it aside and make
25 your decision based on the evidence that you have heard?

1 You are supposed to make your decision
2 in this case based on the evidence that you have heard
3 in the courtroom, not something -- something that you
4 might have read in the newspaper or something that is not
5 evidence, well, that parole business is not evidence, the
6 evidence that you hear in the courtroom is.

7 And what we are asking you to do is just
8 put aside your feeling about parole, whatever they might
9 be, base your decision on the evidence you hear in the
10 courtroom and follow the law in that regard, you know.

11 Could you do that?

12 A Yes, sir.

13 Q Okay. Same question as to Special Issue #2,
14 you have got to be able to put parole aside and not
15 consider it when deciding the -- after all, Special Issue
16 #1 and Issue #2 are both just "Yes" or "No" questions and
17 in answering Special Issue #2 can you also set that aside
18 and base your answer just on the evidence that you have
19 heard during the entire trial?

20 A Yes, sir.

21 Q Okay. Let's shift gears for a minute and talk
22 to you about some aspects of the law that are true in not
23 only capital murder but other cases as well; I talked to
24 you a little bit earlier about the range of punishment
25 in a murder case.

1 The most severe sentence a person could
2 get in a plain murder case would be 99 years to life is
3 the range of punishment in a murder case, is anywhere
4 from five years probation to 99 years to life.

5 And I think that, you know, there are
6 murders that take many different stances, you know, some
7 of those murders are very vicious, on the other hand,
8 some murders are much less vicious type things, some
9 murders -- are you familiar with "mercy killings", are
10 you familiar with that term?

11 A Yes, sir.

12 Q Of course you know if an elderly person does
13 basically what is called a "mercy killing" to their
14 invalid spouse or something who is in a great deal of
15 pain that is not quite what we usually think of as
16 "murder" but that is a situation where someone has
17 intentionally caused another person's death so under
18 Texas law even though it's not near what you and I
19 usually think about when we think about murder it is
20 technically speaking it is a murder so there's a broad
21 range of punishment there. And the jury is required to
22 assess what type of murder it is basically and decide
23 whether the appropriate punishment should be 99 years to
24 life or five years probation or somewhere in between.

25 In order to be a qualified juror we have

1 got to have the type jurors that can keep an open mind
2 that in a murder case they could listen and consider all
3 the evidence and then decide what the appropriate
4 punishment should be and in considering what the
5 appropriate punishment should be you have got to be able
6 to follow the law and consider that full range of
7 punishment.

8 Could you consider the full range of
9 punishment from 99 years to life to five years probation?

10 A Yes, sir.

11 Q Okay. And again, when I say "consider", that
12 doesn't mean you have to say, "Well, I will do this" or
13 "That I will do that", just that you will consider it and
14 then make your decision.

15 Do you believe that you could do that?

16 A Yes, sir.

17 Q Let's say for instance in a capital murder case
18 where a murder and a robbery are alleged, let's say for
19 instance that the State proves to you beyond a reasonable
20 doubt that the defendant committed the murder but we
21 didn't quite prove to you that the defendant committed
22 a robbery; it would be your duty at that time to find the
23 defendant not guilty of capital murder but guilty of
24 murder.

25 Do you understand why?

1 Because we didn't prove that robbery to
2 you.

3 So everything that is in that indictment
4 there we didn't quite make it, we made the murder part
5 but we didn't make the robbery part, could you do that?

6 A You are saying if the evidence showed that he
7 was not -- whomever was there was not there to rob?

8 Q Right. Or if -- not necessarily this evidence
9 showed that but we proved to you the murder but we didn't
10 -- I'm not saying that the evidence will show you that
11 he didn't commit the robbery, it's just that we failed
12 to prove to you beyond a reasonable doubt that he
13 committed the robbery.

14 Do you see what I'm saying?

15 We have proven, you know, this is -- do
16 you believe that -- you believe that we proved the
17 murder?

18 A Yes.

19 Q But you also believe that we did not prove
20 beyond a reasonable doubt the robbery, you think he might
21 have done -- maybe you even think he did do it but you
22 don't think that we have proved it to you beyond a
23 reasonable doubt, we did the murder but failed to prove
24 the robbery then you would have to find him not guilty
25 of capital murder but guilty of murder.

1 Could you do that if that were the
2 situation?

3 A The question is that I'm thinking about would
4 be why was he there just to murder or I mean -- I don't
5 understand.

6 Would you define that?

7 I mean if it's murder I know what you
8 saying about the law, about the extra circumstances but
9 if he was there or she was there to murder isn't that
10 premeditated?

11 Q Well, that would -- in the scenario you gave
12 me that would be a murder, a premeditated murder.

13 A Okay.

14 Q But in Texas that is murder but that is not
15 capital murder.

16 A Okay.

17 Q Because capital murder, remember I said had to
18 be murder plus these things?

19 A Yes, sir.

20 Q And one of the things was a robbery, that was
21 an example I was using but just the fact that a person
22 has planned the murder and as you termed it, was
23 "premedicated" that doesn't necessarily make it a capital
24 murder.

25 It can only be a capital murder if it

1 fits those categories we talked about; murder during the
2 commission of a robbery or burglary or rape or something
3 of that nature.

4 Let's just say, for instance, that a
5 person -- if we charge a person with murder and robbery
6 but instead of being able to prove murder and robbery the
7 evidence showed you that it wasn't a robbery at all, they
8 just went there and murdered the guy because he didn't
9 like him, because he was mad at him.

10 That defendant would be guilty of murder
11 but he wouldn't be guilty of capital murder because we
12 failed to prove the robbery, in fact there was none.

13 And in the example I just gave you do
14 you see what I'm saying?

15 A Yes.

16 Q And what I'm asking you is that in order to
17 find a defendant guilty of capital murder we have got to
18 prove to you beyond a reasonable doubt by example two
19 things; one that he intentionally committed the murder
20 and, two; that he also committed the robbery.

21 And my question is, assume with me for
22 a moment that we don't quite prove the robbery beyond a
23 reasonable doubt; your duty as a juror would be to find
24 him guilty of murder but not guilty of capital murder.

25 Could you do that if that were the

1 facts, if that were the evidence?

2 A Yes, sir.

3 Q Okay. Same way if -- if we charge in our
4 indictment murder and robbery but for some reason the
5 evidence shows it wasn't murder and robbery, it was
6 murder and arson.

7 Murder and arson is capital murder but
8 that is not what we put in the indictment and we are
9 required to prove what we put in the indictment and
10 that's our burden to prove that so if we -- if we prove
11 to you murder and arson but the indictment says murder
12 and robbery you should find him not guilty of capital
13 murder but guilty of murder because we proved that to you
14 and that's in the indictment but we didn't prove the
15 robbery to you so you couldn't find him guilty of capital
16 murder under that circumstance.

17 Are you following me on that?

18 A Yes.

19 But something -- would you go back and
20 tell me what -- which is the highest offense, "capital
21 murder" or "murder", I have got that confused.

22 Q Capital murder is the highest offense because
23 capital murder is punishable either by a life sentence
24 or the death penalty.

25 A So you are saying --

1 Q Murder is punishable by possibly a life
2 sentence but not the death penalty.

3 A -- so if you are saying if there was an error
4 on the paperwork, what you are accusing him of, he or
5 she, and they go in and they murder and it's arson but
6 you said "murder and robbery" that even though in my mind
7 they are equal I would have to go down to a lesser
8 degree?

9 Q You would have to find him guilty of murder
10 rather than capital murder because we didn't prove what
11 we put in the indictment.

12 A Even though that was your mistake?

13 Q Right.

14 A I would have a problem with that.

15 Q Okay. Let me talk to you a little about
16 the indictment; an indictment is that charging instrument
17 -- have you ever been on the Grand Jury?

18 A No, sir.

19 Q An indictment is a charging instrument that a
20 Grand Jury uses basically to get a case to trial and it
21 indicates that they believe there is probable cause for
22 bringing the case to trial.

23 And the indictment also serves another
24 purpose under the law, the indictment sort of gives the
25 defendant notice as to what he should have to defend

1 himself for in Court.

2 Okay. If our indictment says "murder
3 and robbery" then that is what the defendant has an
4 opportunity to prepare for in Court because that's what
5 he's charged with, the defendant and his attorneys have
6 the right, the opportunity to look at this indictment and
7 know "what we have got to be ready for, this is what we
8 are charged with."

9 It would be fundamentally unfair for the
10 State to say, "Okay, we are going to charge you with
11 murder and robbery", you know, really it's "murder and
12 arson" but we are going to tell him something different
13 so they won't be prepared for that.

14 And so the law requires that we prove
15 our case as set out in the indictment so an example I was
16 using, we would have to prove a murder and a robbery for
17 us, for you as a jury to find the defendant guilty of
18 capital murder because it would be fundamentally unfair
19 for us to be able to prove something else and count that
20 as capital murder, too.

21 Are you with me?

22 A Yes.

23 Q So if the scenario I gave you happened it would
24 be your duty as a jury to find him guilty of not capital
25 murder because we didn't prove the murder and the

1 robbery, it doesn't matter what else we have proved, it
2 doesn't matter if we proved that he killed the Pope 50
3 years ago, that is not in the indictment so we have got
4 to be able to prove to you in order for you to find him
5 guilty of capital murder we have got to be able to prove
6 to you what is in that indictment, not other stuff, you
7 know, not arson, not JFK's assassination or not that he
8 got caught for DWI two or three years ago or anything
9 like that. We have got to prove strictly what is in that
10 indictment to you, if we don't do it we haven't met our
11 burden and it's your responsibility as a jury to find the
12 defendant in that situation guilty of murder because we
13 proved that to you but not capital murder because we
14 didn't prove the robbery.

15 A Okay.

16 I have a question for you.

17 Q Okay.

18 A What if something comes up that you are unaware
19 of that say arson was involved but you were unaware of
20 that and maybe you didn't prove the robbery fact but that
21 unaware fact came out, you still could not -- it still
22 would not be capital murder, is that what you are saying?

23 Q Right. Because we have -- in order for us to
24 get a conviction for capital murder it's really -- I
25 think maybe I have complicated this for you but really

1 we have got to prove the murder and we have got to prove
2 the robbery, it doesn't matter what else comes out. If
3 we don't prove that murder and that robbery then the
4 jury's responsibility is to find the defendant not guilty
5 of capital murder but, you know, but guilty of murder.

6 THE COURT: Thirty-five
7 minutes.

8 THE POTENTIAL JUROR: Are you
9 asking me if I could do that?

10 MR. TOWNSEND: I am asking you
11 if you could do that if that were to happen because
12 that's what you would have to do to be able to follow the
13 law.

14 THE POTENTIAL JUROR: Yes,
15 sir.

16 Q (BY MR. TOWNSEND) Okay. Let's see, along
17 with, you know, we have talked about this a little bit,
18 the burden of proof being with us, along with that burden
19 of proof goes the Fifth Amendment privilege and the Fifth
20 Amendment privilege basically says the defendant has a
21 right in a criminal case to not testify if he so chooses.

22 Are you familiar with that?

23 A Yes.

24 Q Is that okay with you?

25 A Yes.

1 Q And that is to say you couldn't hold that
2 against him in any way during the guilt and innocence
3 phase of the trial, you can't base your decision in any
4 way on the fact that he chose not to testify.

5 Could you do that?

6 A Yes.

7 Q And the same way for the punishment phase,
8 during that punishment phase it might be human nature for
9 you to think, "Well, you know, I would like for him to
10 just get up there and say he's sorry" but on the other
11 hand the Fifth Amendment privilege says if he doesn't get
12 up there and testify then you have got to make your
13 decision on Special Issue #1 and Issue #2 strictly on the
14 evidence that is presented and not on something that
15 didn't happen, you know.

16 Could you do that, not hold that against
17 him if he didn't testify at that punishment phase?

18 A Yes, sir.

19 Q Okay. You are going to hear testimony in
20 criminal trials from all sorts of witnesses, some of them
21 may be teachers, preachers, police officers, maybe even
22 possibly somebody you know, I think that's probably
23 unlikely but the key thing is there are all sorts of
24 witnesses.

25 Could you judge those witnesses and be

1 fair and give every witness the same starting spot on the
2 track and not give one a head start over the other one
3 just because he wears a police uniform or just because
4 he's a minister or something like that?

5 Would you give every witness a fair
6 shot?

7 A Yes.

8 Q And not give one an edge over the other one
9 just because of their profession or something like that?

10 A Yes.

11 Q I have done quite a bit of talking, Ms. Coke,
12 I have just got a couple more things I want to ask you;
13 I notice that you mentioned that you knew something about
14 the facts of the case, where did you learn about the
15 facts -- what is it that you understand about the facts
16 of the case?

17 Is it something that you read from the
18 newspaper or did you overhear somebody talking about it?

19 A The news on TV media and paper.

20 Q Okay. Of course the important thing to
21 remember in a situation like this is in order to be on
22 the jury and follow the law you have got to be able to
23 take whatever you may have heard on the streets or read
24 in the newspaper or seen on TV or whatever it was, you
25 have got to be able to -- like we -- like I talked about

1 something earlier, you -- we can't expect you to dislodge
2 that from your mind but simply not to consider that when
3 you are deciding the issues in this case because after
4 all that is not evidence, what they say on TV and what
5 you might see in the newspaper or something.

6 Would you be able to put that aside and
7 decide the case based on the evidence that you hear in
8 the courtroom?

9 A Yes, sir.

10 Q Okay. Mr. Old is one of the Defense Attorneys
11 in the case and you indicated that you know Mr. Old; how
12 well do you know him?

13 A I believe you have represented some of my
14 family members.

15 "John Terrell" was my grandfather and
16 you have been their attorney on some of the "Terrells",
17 that's how I know him.

18 Q How are the "Terrells" related to you, ma'am?

19 A That's my mother's family.

20 Q Okay. Has Mr. Old ever represented you?

21 A No, sir.

22 Q In his representation of your other family
23 members were you ever associated with Mr. Old while he
24 was representing them?

25 A No, sir.

1 Q Okay. Is there anything about your
2 relationship with Mr. Old, has he ever visited in your
3 home?

4 A No.

5 Q Have you ever visited in his home?

6 A No.

7 Q Is there anything about your relationship that
8 would cause you to be slanted one way or another in this
9 case?

10 A No, sir.

11 Q Okay. The other Defense Attorney is Lance
12 Hinson and he stepped out for a moment but do you know
13 Lance?

14 A No, sir.

15 Q You mentioned that you would be teaching school
16 and that it would be difficult to find a substitute.

17 Of course a job is not in any way an
18 excuse for getting off jury duty and I know you
19 understand that but my question to you, if you were
20 sitting on -- as a juror in this case and would you be
21 -- would you be able to focus your attention on the
22 evidence of would you be so distracted that you wouldn't
23 concentrate on the evidence because you were concerned
24 about your classroom?

25 I know my wife is a teacher and I

1 understand those sorts of concerns but would you be able
2 to -- once again I say, kind of put that aside and do the
3 duty that a juror has and concentrate on those things at
4 the times that you needed to?

5 A It would be very stressful to handle both
6 because I would still be in control of what is going on,
7 I am still responsible for what goes on in my classroom
8 so that would be stressful doing this and having made
9 sure that everything is taken care of at work.

10 Could I put it out of my mind?

11 Yes. I could. But it would still be
12 lingering in any moment that we were not speaking or
13 whatever, it would be there.

14 Q Okay. I think, and correct me if I am wrong,
15 but what I think you are saying is that if we were taking
16 a break or if when you went home at night you would be
17 concerned about your school classroom but that you
18 wouldn't be able to put it out of your mind but you could
19 set it aside and concentrate on the jury service, you
20 know, at the times that you needed to be concentrating?

21 A Yes.

22 Q Okay. Ms. Coke, I have taken quite a bit of
23 your time up and I apologize for it to you. If you feel
24 like I have kind of beat you up a little bit I didn't
25 intend to. Some of these things are kind of complicated

1 and I'm not real good at explaining them sometimes.

2 But my last question to you is; is there
3 anything that you feel like you don't understand that we
4 have got -- that we have gone over that you would like
5 me to clear up?

6 A No, sir.

7 MR. TOWNSEND: Pass the juror,
8 Your Honor.

9 THE COURT: Let's take about
10 a five minute break then we will proceed to the
11 Defense.

12 You may just go ahead and step down.

13
14 (Recess.)

15
16 (The following occurred in the presence
17 and hearing of the potential juror:)

18
19 THE COURT: Ma'am, you didn't
20 quite know what to expect when you came up here, did you?

21 THE POTENTIAL JUROR: No, sir.

22 THE COURT: Do you have any
23 questions so far?

24 THE POTENTIAL JUROR: No, sir.

25 THE COURT: Mr. Old.

VOIR DIRE EXAMINATION

BY MR. OLD

1
2
3
4 Q Ms. Coke, I suppose you could say I am "Act II"
5 and there is a reason for me being Act II; the law of the
6 State and the United States requires that the Government,
7 the State of Texas in this case, to prove a man guilty
8 beyond a reasonable doubt -- there is an exhibit before
9 you, it has a "6" on it. (Indicating)

10 A Yes, sir.

11 Q Starting with the second paragraph on that page
12 it defines and tells you what by law "beyond a reasonable
13 doubt" means.

14 Would you read that? (Indicating)

15 A Yes, sir.

16 Q Now, you asked or answered a lot of questions
17 about the word "reasonable doubt", the word "reasonable
18 doubt" has a specific legal meaning and that can -- what
19 is on that page, we all have our own idea about what
20 words mean but when the Court tells you a word has a
21 specific meaning you must make your finding or be bound
22 by that definition and not your own definition.

23 Does your own definition of reasonable
24 doubt conflict with what you read on the page?

25 A No, sir.

1 Q I mean you are not in argument or opposition
2 to that definition?

3 A No, sir.

4 Q In order to qualify as a juror you must take
5 an oath and that oath tells you what your job as a juror
6 is and you are required to affirm that "The case that you
7 are trying that you will a true verdict render according
8 to the law and the evidence so help you God."

9 The definition that you read of
10 reasonable doubt is the law of the State, jurors are not
11 required to know the law, His Honor through the written
12 instrument at the end of evidence in this case will
13 submit to you the law of this case. He will tell you
14 what the law is and then your job as a juror is to weigh
15 or to judge the evidence based upon the law.

16 And that is to say you must make your
17 finding or most of your findings beyond a reasonable
18 doubt or you will not find the defendant guilty.

19 Do you have any problems with accepting
20 the law from the Court as the law?

21 A No, sir.

22 Q Now, I suppose if we went far enough with any
23 person we would find a law that they disagreed with and
24 that ultimately we would find one to where a person would
25 have to say, "I don't care if that's the law or not, I

1 can't find a man guilty of having done that because
2 morally I don't think that ought to be the law" or "It's
3 just wrong."

4 Now, that is really what we are asking
5 you and not about all the laws of the State of Texas but
6 about the law that pertains to a capital murder case or
7 to a criminal case in general.

8 Mr. Townsend talked to you about the
9 parole law and in this written instruction that the
10 Court gives you the Court will tell you words to the
11 effect -- these may not be the exact words but they will
12 have the same meaning -- "You are instructed that in
13 determining punishment in this case you are not to
14 discuss among yourselves how long the defendant will be
15 required to serve any sentence, the sentence imposed,
16 such matters come within the exclusive jurisdiction of
17 the Board of Pardons and Paroles and are no concern of
18 yours."

19 The Court will go on and tell you that
20 the law of this State requires that as to a life sentence
21 in a capital murder case that you, before a person even
22 becomes eligible for parole that he must serve 35 years
23 and that is not counting good time credit or anything,
24 that is he will spend 35 calendar years in a penal
25 institution before he would ever come under the

1 jurisdiction of the Board of Pardons and Paroles.

2 The fact that a person becomes eligible
3 for parole does not entitle him to it, it does not mean
4 that he will get -- that he will ever get it.

5 In answer to Mr. Townsend's questions
6 you said that that bothered you and that 35 years was not
7 enough. And if I understood you correctly about
8 "bother", if I read you correctly, I'm not trying to put
9 words in your mouth, that it might be hard for you not
10 to consider what you have been told about the law, is
11 that correct?

12 A Yes, sir.

13 Q Okay. That if you found a man guilty of
14 capital murder and you are answering the Special Issue
15 #1 you would know by answering that question "No" there
16 is a probability that 35 years later that he would become
17 eligible for parole and you did not think that was long
18 enough, is that correct?

19 A Are you asking me could I -- would I base my
20 decision on knowing that, not on that opinion?

21 Is that what you are asking me?

22 Q What I'm saying is -- let me see if we agree
23 about something; what the Court will instruct you is that
24 you are not even to consider pardon and parole.

25 A Okay.

1 Q That you are not to consider the 35 years that
2 -- in sentencing a man you must consider life to equal
3 actual life, that a man is going to stay in the
4 penitentiary until he dies.

5 A So you are asking me can I go along with that?
6 Could I in determining a sentence?

7 Q Let me go away from capital murder, go back to
8 ordinary murder; you know if you give a man life that at
9 some point that he's going to become eligible for parole,
10 is that going to effect the sentence that you gave him?

11 A No, sir.

12 Q Okay. I mean in determining the giving of a
13 life, of a life sentence you can consider life to
14 actually mean life?

15 A Yes.

16 Q You will not consider -- you will not be
17 influenced by at all the fact that after 35 years he may
18 become -- he becomes eligible for parole?

19 A Okay. I wouldn't like it but, yes, I could
20 keep that out of my mind when I am making that decision.
21 Yes, sir.

22 Q Okay. Special Issue #1 asks you if you find
23 beyond a reasonable doubt that there is a probability
24 that the person charged will commit criminal acts of
25 violence in the future and be a danger to society.

1 Mr. Townsend told you that "society"
2 included life in the penitentiary. Okay.

3 So what that question really is, if you
4 find this man guilty are you -- or you found him guilty
5 and you answer this question "No", you have given him a
6 life sentence?

7 A Yes, sir.

8 Q Okay. And what you are saying is that you must
9 presume that he's going to be in the penitentiary for the
10 rest of his life?

11 A Yes, sir.

12 Q And that's part of society?

13 A Yes.

14 Q Okay. Is the fact that you are concerned about
15 the law of parole, is that going to influence you in
16 answering that question "No?"

17 A No, sir. It wouldn't.

18 Q I mean you will create the fiction in your mind
19 and lay aside that if you answer that question "No" he's
20 going to spend the rest of his life in the penitentiary?

21 A Yes.

22 Q Mr. Townsend was questioning you about the
23 indictment, you understand that indictment is not
24 inference of guilt?

25 A Yes, sir.

1 Q It does not mean a thing --

2 A Yes, sir.

3 Q -- in your role as a juror?

4 A Yes, sir.

5 Q I mean it doesn't make anything more likely
6 than not?

7 A You just have to prove it.

8 Q What?

9 A He just has to prove it, that's what you are
10 saying?

11 Q Who has to prove it?

12 A He has to prove the indictment.

13 Q But the fact that somebody has been indicted
14 is not evidence of guilt?

15 A Yes, sir. I know that.

16 Q Now, he asked you a hypothetical about murder
17 plus robbery and the evidence showed murder plus arson,
18 let me change the hypothetical, let's say it is, the
19 indictment in my hypothetical case is murder plus
20 robbery, intentionally killing plus robbery and the facts
21 of this case prove to you that -- that it was not murder
22 plus robbery, it was murder versus kidnapping and you
23 believe beyond a reasonable doubt that the person charged
24 intended to kidnap that person and had no intention of
25 robbing him; can you say by your verdict "Not guilty of

1 capital murder?"

2 A Yes. I could.

3 Because that's what I have to look at,
4 that is what I have to go by but I wouldn't agree with
5 it.

6 Q You wouldn't agree with it?

7 A I mean to me it's both wrong.

8 Q Would you be violating your own conscience to
9 do that?

10 MR. TOWNSEND: Object, Your
11 Honor. I believe that's an improper question.

12 She said she wouldn't agree with it, she
13 could do it, whether she violates her conscience or not.

14 THE COURT: Sustained.

15 You don't have to answer the question.

16 If I sustain the objection you don't
17 have to answer the question, if it's overruled that means
18 you do answer it.

19 MR. OLD: In yours and Mr.
20 Townsend's discussion about that you asked him I think,
21 I mean -- I mean if you made a decision or if the
22 indictment was wrong, is that what you call a "legal
23 technicality?"

24 THE POTENTIAL JUROR: Yes,
25 sir.

1 Q (BY MR. OLD) The Court will tell you that the
2 State has the burden in the case and it never shifts to
3 the Defendant.

4 A Would you repeat that, please?

5 Q Excuse me. In the written instruction of the
6 Court the Court will tell you that the State has the
7 burden of the proof, that is they must prove beyond a
8 reasonable doubt their case against the person charged?

9 A Yes, sir.

10 Q And the Defendant does not have the burden of
11 proof?

12 A Yes, sir.

13 Q And I think in the -- I guess it has been about
14 a month ago since the first day we were here, the Court
15 told you that Mr. Wardlow and I could sit over here and
16 twiddle our thumbs and do nothing, "work crossword
17 puzzles" is the way that he put it, I assure you that it
18 wouldn't be done, I wouldn't work crossword puzzles but
19 if the defendant did absolutely nothing, did not testify,
20 did not present evidence, would that be an inference of
21 guilt to you?

22 A No, sir.

23 Q Do you consider that instruction to be a "legal
24 technicality?"

25 A I am confused now.

1 Q Okay. You asked him, you said the indictment
2 being wrong being a "legal technicality."

3 The fact that the Court tells you that
4 "All men are presumed to be innocent and you must presume
5 them to be so until they are given -- until they are
6 proven -- until the State proves guilt beyond a
7 reasonable doubt", do you consider that to be a
8 "technicality?"

9 A No, sir.

10 Q Do you consider that to be a real part of our
11 law?

12 A Yes, sir.

13 Q And do you think that is something that a
14 person is charged with a crime -- that is charged with
15 a crime is entitled to?

16 A Yes, sir.

17 Q A presumption of innocence?

18 A Yes, sir.

19 Q What have you heard about this case or read
20 about it?

21 A I saw it on the evening news one day where they
22 went to the house and that the body had been found
23 wrapped in a blanket or something in a closet and that
24 they at that point, they had no clues, they did not
25 have any suspects, looked like there was a missing

1 vehicle -- it has been a long time.

2 Q And is all of your information that you have
3 received in that regard from media?

4 A Yes, sir.

5 Q And I mean not a matter of what other people
6 have said?

7 A No, sir. I can't remember anybody saying
8 anything.

9 Q Now, I believe you told the Court that you
10 could lay that aside?

11 A Yes, sir.

12 Q Okay. What if another hypothetical; during the
13 trial of this case there was a conflicting evidence as
14 to whether or not the body was wrapped in a blanket, one
15 witness testified it was, one witness testified it was
16 not, would the fact that had been reported to you that
17 way outside of this courtroom, would that effect you in
18 the way you determine that issue?

19 A There is no significant proof either way -- I
20 would have to determine in my mind.

21 Q You have got two witnesses that you consider
22 to be of equal credibility, one of them says "No. It
23 wasn't wrapped in a blanket."

24 The other one says, "Yes. It was."

25 A I would think that would -- that might have a

1 bearing on my -- my decision, I'm afraid it might.

2 Q It might if the evidence was conflicting as to
3 what you heard you might be put in a position to where
4 you would go out of the evidence to support some of the
5 evidence?

6 A Well, if I have to decide if that's -- it's
7 according to what you are asking me to decide, if you are
8 asking me to decide if I have to assume what happened by
9 the facts I am afraid I may have to assume that the way
10 I feel -- and I don't know how to explain that -- if
11 there's conflicting evidence I would be undecided, I
12 wouldn't know how to decide except for what is in my mind
13 and there's a possibility I might think -- probably would
14 think that it happened that way if there is not evidence
15 but if there is conflicting evidence. Yes.

16 Q So what you have heard in that situation could
17 influence your decision?

18 A I think in that instance. Yes.

19 Q On the questionnaire, it has been about a month
20 since you have seen it, if you don't want to take my word
21 what I quote from it I will show you a copy -- copy of
22 it.

23 The first page asks you your opinion
24 about the death penalty.

25 THE COURT: Here's your

1 questionnaire.

2
3 (Handed to the potential juror.)

4
5 MR. OLD: And you circled
6 "Number 2" and what that says is that in an appropriate
7 case that you could return a verdict that had the effect
8 of the death penalty.

9 It did not say "In all cases?"

10 THE POTENTIAL JUROR: That's
11 true.

12 Q (BY MR. OLD) Going down to the bottom it's
13 asking you a question, "If you are in favor of the death
14 penalty in some murder case do you agree that a life
15 sentence rather than the death penalty would be
16 appropriate under the proper circumstances?"

17 And you wrote "Undecided" and you marked
18 it out and put "Yes."

19 And I mean I presume and I believe that
20 people do put a lot of thought into their answers and
21 that's not a question that is easily answered "Yes" or
22 "No" and I'm not criticizing you for that, having changed
23 your answer.

24 What was your mental impression, what
25 were you undecided about when you first started answering

1 that question, if anything?

2 A I think that I didn't read it very carefully.

3 Q Okay.

4 A And that's why I put "Undecided", that if the
5 evidence was that -- appropriate that this person should
6 not get the death penalty I could go along with that.

7 However, I feel just from watching media
8 and stuff that lots of times it seems like our criminals
9 get off too easy.

10 Now, that's just an opinion that is
11 based on our society and not by fact and I realize that,
12 I realized that it's a lot more complicated than what it
13 appears.

14 But I think when I first read that
15 that's why I went back and I reread it and I put more
16 thought into it.

17 Q But I mean you were undecided, was that you
18 were leaning more toward the death penalty than the life
19 sentence?

20 A No. I think I just -- I didn't read it very
21 carefully the first time.

22 Q Up above where it asks you to explain your
23 answer to being in favor of the death penalty you
24 answered "No one should murder another person without
25 losing their own life or freedom."

1 Would giving a life sentence be the
2 equivalent by what you mean by "losing their freedom?"

3 A Yes, sir.

4 Q Now, as to plain old ordinary murder or non-
5 capital intentionally or knowingly taking the life of
6 another, that is punishable by from a minimum of five
7 years probated with a five to 99 years or life and again,
8 would your views on the loss of freedom carry you to the
9 upper ends of the scale, would you be more in favor of
10 a life sentence than a five year probated sentence?

11 A It would be according to the circumstances.

12 Q What I'm really doing is I am making you "King
13 for a Day" and you can rewrite the law; do you think five
14 years probated is too light a sentence for any murder?

15 A No. I don't think so. I think we have -- I
16 think our laws have to look at each individual case and
17 determine the outcome and you cannot just say overall
18 that it's the same for everybody.

19 Q What do you teach?

20 A Home Economics.

21 Q High school?

22 A Yes.

23 Q Have you taught that most of your career or all
24 of your career?

25 A I taught fifth grade for two years and I have

1 been at the high school for eight years now.

2 Q Special Issue #2 that you have looked at before
3 defines mitigating evidence, I would like to ask you
4 about some different categories of evidence and I'm not
5 asking you whether or not you would find them being
6 sufficiently mitigating, I'm asking -- what I'm asking
7 you is can you consider that type of evidence and not
8 reject it automatically?

9 Could you consider the age of a person
10 charged with a crime as to mitigating evidence?

11 A Yes. I could consider it.

12 MR. TOWNSEND: Object.

13 THE POTENTIAL JUROR: But I
14 am not for sure what that -- my outcome.

15 MR. OLD: I'm not asking you
16 your outcome, I'm saying would it be evidence that would
17 fall within mitigation?

18 I'm not saying you would find it
19 sufficiently mitigating but I mean would you at least
20 consider it as being the type evidence that might go to
21 mitigation?

22 THE POTENTIAL JUROR: Yes,
23 sir.

24 Q (BY MR. OLD) Let me give you an example; I
25 have had people tell me, "I wouldn't consider what a

1 psychiatrist said as to anything, I just would reject
2 that evidence?"

3 A Yes.

4 Q And the way I say that is "I wouldn't weigh
5 that evidence, I just wouldn't consider it?"

6 A Yes.

7 Q Okay.

8 A Are you asking me do I agree with that or I am
9 -- yes -- I understand what you are saying.

10 Q How about psychiatric evidence?

11 A "How do I feel about that?"

12 Q Yes.

13 A I think that they are experts in their field
14 and we have to take into consideration what they say.

15 I may not always agree with it but I
16 have to consider it.

17 Q But that is evidence that you would weigh --

18 A Yes, sir.

19 Q -- as to sufficiently mitigating?

20 A Yes.

21 Q Along with that and perhaps independent of it
22 would you consider somebody's background, their family
23 background, how they were raised?

24 A Yes, sir.

25 Q Would you consider their religious belief,

1 whether or not they are Christians?

2 A Yes, sir. All of this I will consider.

3 I don't know. You are not asking me my
4 final opinion, are you?

5 Q No, ma'am. No, ma'am. What I'm asking you,
6 will you at least hear it before you say "No?"

7 The person who "I wouldn't believe a
8 word a psychiatrist told me" or "I would put no
9 confidence into any opinion that they have", they aren't
10 going to consider that evidence, they are not going to
11 weigh it.

12 A No, sir. I am not like that.

13 Q Special Issue #1 requires for you to answer
14 that question that it be proven to you beyond a
15 reasonable doubt, which you now know the legal definition
16 of that, there is a probability.

17 "Probability", you have been told is
18 "more likely than not."

19 "That the defendant will commit criminal
20 acts of violence that will constitute a continuing threat
21 to society."

22 Now, you know something that is more
23 likely than not is mere probability, it takes 50 percent
24 of the evidence plus just a little more, it doesn't take
25 51 percent, it just takes -- if you are weighing it on

1 the scale just a shifting of the scales is "more likely
2 than not", do you agree with that, "more probable than
3 not?" (Indicating)

4 A Yes, sir.

5 Q But that 50 percent -- 50 plus a little
6 evidence has to be evidence that all of it is proven to
7 you beyond a reasonable doubt?

8 A Yes, sir.

9 Q Okay.

10 THE COURT: Thirty minutes.

11 MR. OLD: Thank you.

12 As to "criminal acts of violence", do
13 you understand that all criminal acts are not "acts of
14 violence", like a forgery?

15 THE POTENTIAL JUROR: Yes,
16 sir.

17 Q (BY MR. OLD) Okay. Like theft?

18 A Yes, sir.

19 Q There's a lot of crimes that are committed
20 without violence?

21 A Yes, sir.

22 Q Would you require the State to prove to you
23 beyond a reasonable doubt that it is more likely than not
24 that there will be a criminal act of violence rather than
25 just "criminal acts?"

1 A I don't think I understand what you are saying.

2 Q Would you require the State to prove to you,
3 answer that question "Yes" that the probability is that
4 there will be "criminal acts of violence" and not merely
5 "criminal acts?"

6 A I would have to research that more.

7 Q "Research it?"

8 You better ask me your question, I don't
9 think we are communicating.

10 A It sounds like to me that you are asking me are
11 there more acts of criminal violence as just criminal
12 acts, is there violence -- is there more violence in the
13 criminal acts or non-violence, is that what you are
14 asking me?

15 THE COURT: I'm not sure that
16 you are talking about the issue.

17 MR. OLD: The words in bold
18 there, "criminal acts of violence", that's what the State
19 must prove to you.

20 THE POTENTIAL JUROR: Okay.
21 Okay.

22 Q (BY MR. OLD) If they merely prove to you
23 beyond a reasonable doubt that there was a probability
24 that the person charged would continue to write hot
25 checks or forged checks, that's all they prove to you,

1 you wouldn't consider that to be a "criminal act of
2 violence?"

3 A I still don't think I understand exactly what
4 you are asking.

5 I think I'm getting closer, though.

6 Q Okay. You agree that there are crimes that are
7 committed without violence?

8 A Yes, sir.

9 Q Okay. The State would have to prove to you
10 more than the probability that the defendant would commit
11 criminal acts, they would have to prove to you that the
12 defendant would commit criminal acts of violence in the
13 future?

14 A Yes, sir. They would have to prove beyond a
15 doubt the probability of that before I would agree with
16 that.

17 Q We talked about "probability", the second issue
18 you are asked, if there is sufficient mitigating
19 circumstances -- what does the word -- I mean what does
20 "sufficient" mean to you?

21 A "Enough."

22 Q "Enough?"

23 A Yes.

24 Q One -- what is the least passing grade you can
25 make in Mount Pleasant now?

1 A 70.

2 Q Well, is 70 "sufficient" in school?

3 A Yes.

4 Q Not "good" but it's "sufficient?"

5 A Yes.

6 Q In the indictment it alleges the word
7 "intentionally" -- do you have the indictment in front
8 of you?

9 A Okay. (Indicating)

10 Q It says "did then and there intentionally cause
11 the death of an individual."

12 The word "intentional" is one of those
13 words that has a specific legal definition that a juror
14 must be bound by. The law will tell you that "A person
15 acts intentionally or with intent with respect to a
16 result of his conduct when it is his conscious objective
17 or desire to cause the result."

18 I mean that is a definition that you can
19 follow?

20 A Yes, sir.

21 Q Okay. "Conscious objective", does that mean
22 that he intended to do it, he wanted to do it?

23 A Yes, sir.

24 Q There is another word and another -- and that's
25 what the law calls "mental state", there is another

1 mental state that is defined by the word "knowingly" and
2 the law again has a definition for the word "knowingly."

3 "A person acts knowingly or with
4 knowledge with respect to the result of his conduct when
5 he is aware that his conduct is reasonably certain to
6 cause a result?"

7 A Yes, sir.

8 Q Okay. Do you have any quarrel with that
9 definition as the definition that you can follow in
10 reaching a verdict in this trial?

11 A No, sir.

12 Q Now, what Mr. Townsend referred to as "plain
13 murder" or non-capital murder is either intentionally or
14 knowingly killing someone.

15 Capital murder, it must be intentional,
16 it must be a conscious objective or desire to cause the
17 result.

18 Okay. If the State proves -- fell short
19 in its burden of proof and the evidence as you saw it was
20 that the defendant knowingly caused -- killed someone in
21 the course of committing a robbery would you find them
22 not guilty of capital murder?

23 A Yes, sir.

24 Q You wouldn't have any problem with that?

25 A I might have a problem with it but according

1 to what I have been instructed to do that's what I would
2 do but morally, you know, it's still "murder."

3 Q "Morally" or "legally?"

4 A I guess both. You are defining murder, I know
5 capital and just regular murder but I know legally it
6 would be "murder" but morally I feel -- I don't know --
7 what I'm trying to explain to you is that I would have
8 to do that because that's the difference between the two
9 words and he used the word "intentionally" here and
10 because the word "knowingly" -- I would have to go with
11 the verdict of murder instead of capital murder.

12 "Personally do I like that?"

13 I have some problems with that. If it
14 was still -- still as being a wrong -- I'm trying to
15 choose the right words here.

16 Q I asked you a moment ago if you were "King
17 for a Day" and could change the words would you perhaps
18 be -- to perhaps make "intentionally" and "knowingly"
19 both capital murder?

20 A Probably.

21 Q Then what you would like the law to be is
22 different from what it is?

23 There's nothing wrong with that.

24 A On this particular issue some of the laws --
25 this is the first time I have ever been involved in

1 something like that but in that particular instance those
2 two words are very close. Yes.

3 Q But you do see the difference in them?

4 A Yes.

5 Q Okay. Would the fact that you may be of the
6 opinion that both "intentionally" and "knowingly" in this
7 case ought to be punishable by -- as capital murder, are
8 you sure that you can lay aside your opinion or your bias
9 to the law and render a true verdict or is what you think
10 ought to be, is it going to subjectively effect your
11 answer to that question?

12 Is it going to take you from "knowingly"
13 I mean objectively you say "knowingly" but subjectively
14 are you going to get it up to the intentional because
15 that's what you think it ought to be?

16 Is it going to have a subjective effect
17 on your deliberations?

18 A No, sir.

19 Q I mean if all they proved is "knowingly" you
20 would answer "murder?"

21 A Yes, sir.

22 Q There is a list of witnesses in front of you,
23 what I would ask you to do is to look at the list, has
24 "Witness List" at the top of it and go over this list and
25 when you come to a name that you recognize tell me the

1 name and we will talk. Even if you just know who they
2 are, I'm not asking you if you have personal knowledge
3 of them but tell me both. (Indicating)

4 A No, sir. I don't know any of these people.

5 Q Your grandfather was Sheriff of this county for
6 a long time?

7 A Yes, sir.

8 Q One of the most popular men that ever lived in
9 this county, probably the most popular; the fact that he
10 was a law enforcement officer, the Sheriff of this county
11 -- now, I'm sure you notice the names of a -- of a lot
12 of people who were sheriffs and other type law officers
13 on that list, would you give a witness a head start
14 merely because they are law enforcement officers?

15 That is to say does that fact alone have
16 more credibility with you?

17 A No, sir.

18 Q Thank you.

19 Let me ask you this other question; if
20 you are John Terrell's granddaughter you are kin to most
21 -- or more people in this county than most people. In
22 fact I have heard it said that you are kin to everyone?

23 A That's right.

24 Q Did you recognize any last name on that list
25 that could be your relatives?

1 A My maiden name is "Cook", I saw "Officer Cook"
2 but I'm not familiar with that "Cook."

3 Q Okay.

4 A No, sir. I didn't see any names.

5 Q If Officer Cook turned out to be your long lost
6 whatever cousin, could you lay that aside in weighing his
7 testimony?

8 A Yes, sir. I could.

9 Q You live in Argo?

10 A Yes, sir.

11 Q Do you attend Argo Missionary Baptist?

12 Who is the minister there now?

13 A Jackie Barrett, Brother Jackie.

14 Q I think we have covered this in your answer,
15 your opinion as to the criminal justice system; that it
16 was not tough enough for or on the ones who break the
17 law.

18 I think you told me earlier that's how
19 it appeared to you but you weren't the person on those
20 juries?

21 A That's true.

22 MR. OLD: Okay. And if those
23 seats over there are hot -- I mean you would have to
24 yield your opinion to a juror who spent whatever time
25 required to reach a verdict in the case and weighing the

1 facts as opposed to what you might have read in the
2 newspaper?

3 We would pass the witness, Your Honor.

4 THE COURT: Ma'am, if you will
5 step down I will have some more instructions for you in
6 a few minutes.

7 Do you have any questions of us, though,
8 before you leave the courtroom?

9 THE POTENTIAL JUROR: No, sir.

10 THE BAILIFF: Watch your step
11 there.

12
13 (The following occurred outside the
14 presence and hearing of the potential juror:)

15
16 THE COURT: Does the State
17 have any challenges?

18 MR. TOWNSEND: None, Your
19 Honor.

20 THE COURT: Defense have any
21 challenges?

22 MR. OLD: Yes, Your Honor.

23 The Defendant would first challenge the
24 juror as to what she had heard about the case, she
25 indicated that if those things came into play in certain

1 circumstances that she would fall back and consider what
2 she had heard outside of this courtroom that was not
3 testimony under oath.

4 Secondly we would challenge the juror
5 on her statement that 35 years was not enough prior to
6 being eligible for parole, that she expressed a bias or
7 a prejudice against that particular law.

8 She said that she would try to follow
9 it but it would still bother her. Though she did answer
10 affirmatively that she could put it out of her mind she
11 had great concern as to whether she actually could or
12 not.

13 No other challenges.

14 THE COURT: I'm going to
15 overrule the second objection on the 35 years and I
16 intend to ask the juror about whether or not she could
17 follow the law if she was instructed not to consider the
18 news accounts.

19 Mr. Townsend, you are standing, did you
20 wish to address the Court on either of these issues?

21 MR. TOWNSEND: If you are
22 going to talk to her about the news coverage that's all
23 I was going to request -- she told me she could put it
24 aside and she told Bird maybe she might not could, she
25 was equivocating.

1 I would like you to clear it up.

2 THE COURT: I will try to
3 clear it.

4 Mr. Old, you are talking about when she
5 was talking about the body being wrapped in a blanket
6 might be disputed testimony and she would fall back on
7 what she had heard?

8 MR. OLD: Yes.

9 THE COURT: Let's bring her
10 back in.

11 THE BAILIFF: Come back in,
12 please.

13
14 (The following occurred in the presence
15 and hearing of the potential juror:)

16
17 THE COURT: Okay, ma'am, it's
18 now my turn, I'm not going to take long, I would just
19 have one area that I would like to get some
20 clarification; when Mr. Old was talking to you about what
21 you had heard about the case you told us that you had
22 heard or watched the news accounts, that you saw the
23 house on the news, you knew that a murder or a death had
24 occurred, that somebody might be missing and that a body
25 was found wrapped in a rug or blanket in the closet.

1 Then Mr. Old talked to you about the
2 "What if scenario" where you had two credible witnesses,
3 one said the body was wrapped in a blanket, one said the
4 body wasn't wrapped in a blanket and he asked you what
5 would you do about it and would you give more credibility
6 to the one that said it was wrapped in a blanket because
7 you had heard it on the news, that basically was the
8 question.

9 Now, ma'am, you will take an oath if you
10 are on this jury to base your verdict on the law and the
11 law is what will be given to you by the Court and the
12 evidence.

13 The evidence must come from witnesses
14 who have been sworn in who sit on the witness stand where
15 you are and answer under oath. You as a juror have a
16 right to judge their credibility based on their demeanor,
17 the way they appear, what they say and the reasonableness
18 of what they say.

19 It certainly is inappropriate for any
20 juror or jury to base a verdict on what they heard
21 outside the of the courtroom.

22 Now, that news account is something that
23 you have to be able to put out of your mind and if you
24 can't I'm not going to quarrel with you over it, I just
25 need to get clarified in my mind whether you can or not

1 follow the oath that requires you not to consider
2 anything other than what you hear in the courtroom.

3 Now, you may hear a witness that is very
4 credible say, using his example, "A body was found in the
5 closet wrapped in a blanket", you may hear another
6 credible witness say, "No. The body was not wrapped in
7 a blanket."

8 You have to decide -- first, that may
9 or may not be an issue, it might not have anything to do
10 with anything, you have to decide and it may, we don't
11 know, that's just an example we are using, you might not
12 know which one to believe but you can't rely on what you
13 have heard from somebody else, see, that's the instance
14 where if you are going to be a qualified juror you must
15 put out of your mind what you have heard in the community
16 or on the news because if you are going to let the news
17 accounts influence you then you are basing your verdict
18 on something other than the evidence.

19 Now, if you will not be able to put it
20 out of your mind and if in that particular case it would
21 influence you then I need to know about it but if you can
22 do the mental gymnastics necessary to put it out of your
23 mind and base your decision and verdict on what you heard
24 in the courtroom then I want to know that..

25 And you are the only one that can answer

1 that question. If you are not sure of a fact -- let's
2 just get away from that one example -- if you are not
3 sure of a fact in a trial, you have heard different
4 things from different people and you are not really sure
5 in your own mind what the fact is you cannot go outside
6 of this courtroom for an independent investigation nor
7 can you go outside of what you have heard in this
8 courtroom to base your verdict on what you have heard
9 from the community.

10 So in a case, again, leaving aside the
11 blanket, in a case where the State has some critical
12 thing to prove to you and you have heard from a couple
13 of different people and it's not just proven you can't
14 look to someone outside of the Court to help you make
15 your mind up if it's not proven so if the blanket were
16 a critical issue and you couldn't believe either one then
17 that gets back to that reasonable doubt; you haven't been
18 convinced beyond a reasonable doubt of whatever that fact
19 is.

20 And you can't let the outside news
21 influence you to get to this reasonable doubt.

22 Let's just say it's "guilt. "Well, I
23 don't know whether he's guilty or not, I sure think he
24 is guilty but, you know, but based on all these witnesses
25 I don't know but, you know, that television report said

1 he was guilty so I will just find him guilty."

2 I know that wasn't the case, that wasn't
3 an example given but that's just another example given,
4 you can't do that.

5 If you can set it aside, fine, if you
6 can't and you are going to let something that you have
7 heard influence you that's fine, too, we just need to
8 know what you can and can't do.

9 THE POTENTIAL JUROR: The
10 reason I'm hesitant is because if you -- if I have to
11 come up with -- and I know I am going back to the blanket
12 because it frightens me -- that if I have to make that
13 kind of decision they are in -- and there is conflicting
14 evidence but I am told I have to come up with -- make a
15 decision and that's lingering in the back of my mind --
16 I don't know how -- and maybe because the blanket is
17 insignificant and probably if it was something important
18 like get back here -- I wouldn't have -- have a problem.
19 I don't know. I'm having a hard time with this, too.

20 THE COURT: I can't see how
21 the blanket could make that critical of a decision but
22 it might if it were something other than a murder trial
23 but since we are in a murder trial you certainly can have
24 a dispute on evidence that may not be material but if you
25 have a doubt on a material fact -- let's just say that

1 the TV said that the man was shot with a gun and you have
2 one witness saying, "No. It wasn't a gunshot, it was a
3 knife wound" and another witness says, "No. It was a
4 gunshot."

5 Let's say they are both medical
6 examiners and they can't agree what killed him, it might
7 have been a knife, it might have been a gun, there's a
8 hole in the body and they can't say.

9 This is not going to happen in most
10 cases but let's say the medical examiners, one says --
11 they are both credible -- one says "It was a gunshot",
12 one said "It was a knife wound."

13 In that case actually the State has
14 failed to prove to you beyond a reasonable doubt how the
15 man died because you have two credible people saying
16 different things. That's where you couldn't go back to
17 that TV newscast and say, "Well, the reporter says he was
18 shot so I'm going to believe the medical examiner that
19 says he was shot."

20 Now, there might be something in the
21 medical examiner's testimony to make you believe one or
22 the other but you can't look to outside sources to
23 determine who is or is not more credible.

24 THE POTENTIAL JUROR: Maybe
25 because it's the significance of the blanket or something

1 like that. I don't have a problem with that on the
2 blanket, I think that's because there would be so many
3 eyewitnesses I guess they are doing the -- or doing the
4 TV spot or whatever and they may have seen the blanket
5 so I think that's where I'm having a problem with the
6 blanket because you do not have to be an expert as to
7 whether or not you saw the blanket, you see, I have a
8 hard time with that.

9 As far as evidence, I would go by what
10 the expert or whoever has the most knowledge of that
11 area, that would be the evidence here.

12 And I know what you are saying about
13 putting TV out and everything.

14 THE COURT: Can you do it?
15 Can you base your verdict strictly on what you hear in
16 this courtroom and not let that outside news account
17 influence your verdict?

18 THE POTENTIAL JUROR: I think
19 it influences everybody's verdict I am afraid.

20 THE COURT: I'm not worried
21 about other people, I'm worried about you.

22 THE POTENTIAL JUROR: I don't
23 know. It's according to the issue, what comes up. I
24 don't think I would.

25 THE COURT: You don't think

1 you would what?

2 THE POTENTIAL JUROR: I don't
3 think that there was anything I saw that would -- is
4 evidence is what I'm saying but the blanket issue, I
5 don't know why I can't just say -- I guess because if you
6 are asking me to make a decision whether or not the
7 blanket was there -- and I wish I could get off the
8 blanket but I can't -- and you have conflicting -- you
9 have to say "Yes" or "No" whether the blanket was
10 there because my mind would go back and search
11 everything, I would have to go with, "Yes. The blanket
12 was there."

13 THE COURT: So you are telling
14 me you would base your verdict on evidence that you have
15 heard outside of the courtroom?

16 That's what you are telling me?

17 THE POTENTIAL JUROR: No. I
18 know -- that's why it's bothering me.

19 THE COURT: If I'm reading you
20 correctly you would allow the media to influence your
21 verdict if it were in an area that you could not decide
22 just based on what you have heard in this courtroom, you
23 have heard from witnesses, can't make your mind up so
24 your mind is going to go back to what you heard on TV and
25 let that influence your decision, is that what you are

1 saying?

2 THE POTENTIAL JUROR: That's
3 what I'm saying. I don't know if I agree with it but
4 that's what it sounds like I am saying.

5 THE COURT: Okay. Thank you,
6 ma'am.

7 You may step down.

8
9 (The following occurred outside the
10 presence and hearing of the potential juror:)

11
12 THE COURT: Sustained.

13 Let's go to lunch, tell her she will not
14 be on the jury.

15
16 (Noon recess.)

17
18 (The following occurred in the presence
19 and hearing of the potential juror:)

20
21 THE COURT: Good afternoon,
22 ma'am, how are you doing?

23 THE POTENTIAL JUROR: Fine.

24

25

1 BETTY JOYCE HOLLINGSWORTH, Potential Juror #145,
2 was called as a Potential Juror and, having been
3 previously sworn by the Court, testified as follows:
4

5 THE COURT: Go ahead and take
6 your seat and try to get comfortable.

7 THE POTENTIAL JUROR: Okay.

8 THE COURT: Ma'am, are you
9 "Betty Hollingsworth?"

10 THE POTENTIAL JUROR: Yes,
11 sir.

12 THE COURT: Juror 35?

13 Ma'am, I'm Gary Stephens, I am presiding
14 over the jury selection and trial in this case.

15 We have two District Attorneys working
16 on this case, the lead attorney is the District Attorney
17 of Morris County and that's Mr. Richard Townsend.

18 His partner for this case is "Randy",
19 "Randall Lee", I think he's in trial in another Court so
20 he won't be with us today.

21 We have two Defense Attorneys, Mr. Bird
22 Old, III.

23 MR. OLD: Good afternoon.

24 THE POTENTIAL JUROR: Good
25 afternoon.

1 THE COURT: And Mr. Lance
2 Hinson.

3 MR. HINSON: Hello.

4 THE COURT: Next to Mr. Hinson
5 is the person charged, Billy Joe Wardlow.

6 THE DEFENDANT: Good evening.

7 THE COURT: The lawyers have
8 read your questionnaire and they are familiar with the
9 answers. They are going to talk to you about some of
10 your answers and they are also going to talk to you about
11 the principles of law involved in a death penalty case.

12 You will be asked a lot of questions and
13 your answers will let us know whether or not to put you
14 on the jury.

15 In order to be a juror you must be able
16 to understand and follow the law so we are going to ask
17 you if you can understand the laws that apply and we are
18 going to ask you if you can follow those laws but, ma'am,
19 we need to know more than just "Yes I can" or "No I
20 can't", we have found over the years of picking death
21 penalty cases that most jurors can follow the law but
22 that doesn't necessarily mean that they are an
23 appropriate person in a death case.

24 So we want to know what your opinions
25 are about some of the laws and issues and we want to just

1 kind of get inside your head and find out what your
2 thoughts are.

3 The only way we know to do that as
4 lawyers is to ask questions and, ma'am, there aren't any
5 right or wrong answers, there's no right or wrong
6 opinions, you have a right to agree or disagree with our
7 laws, you have proven your citizenship by appearing for
8 jury service so we certainly don't want you to try to
9 guess as to what kind of answers you should give to be
10 a good citizen. There's nothing you have to prove to us,
11 just share your thoughts and opinions with us so we can
12 decide if this is a task you should undertake.

13 Now, ma'am, in your questionnaire you
14 stated that you do have some knowledge of the facts of
15 this case; have you heard that from news media or from
16 people in the community?

17 THE POTENTIAL JUROR: Both the
18 news media and people in the community.

19 THE COURT: What have you
20 heard, ma'am? What do you think occurred based on what
21 you heard?

22 THE POTENTIAL JUROR: At the
23 time this allegedly took place we had the scanner on, was
24 listening to it, we were listening to it and it stays on
25 all the time, plus my husband is a reserve deputy

1 sheriff.

2 Then I read the newspaper and the TV
3 media that this allegedly happened, this elderly man that
4 was shot and his pickup was taken.

5 So that's what I have seen or heard.

6 THE COURT: Did you ever hear
7 the man's name mentioned?

8 THE POTENTIAL JUROR: I did
9 but his name is not familiar to me. I didn't know him.

10 THE COURT: You did not know
11 him?

12 THE POTENTIAL JUROR: No, sir.

13 THE COURT: Did you ever heard
14 Mr. Wardlow's name mentioned?

15 THE POTENTIAL JUROR: No. I
16 didn't.

17 THE COURT: Do you have an
18 opinion as to whether or not Mr. Wardlow is guilty?

19 THE POTENTIAL JUROR: He must
20 be proven guilty to me.

21 THE COURT: So you can still
22 sit here and tell me you an ignore what you have heard
23 and put it out of your mind and base your decision on the
24 evidence that comes out in this trial?

25 THE POTENTIAL JUROR: That's

1 right.

2 THE COURT: And you will not
3 let the news media or from what you have heard from the
4 community influence you?

5 THE POTENTIAL JUROR: No.

6 THE COURT: On the first page
7 of the questionnaire you have six categories to choose
8 from as to express your view of the death penalty. The
9 last question is if you are in favor of the death penalty
10 do you agree a life sentence may be appropriate under
11 proper circumstances, and you left it blank?

12 THE POTENTIAL JUROR: Well,
13 to me that would be certain circumstances -- let me
14 explain -- in the manner in which the murder took place.

15 THE COURT: You don't really
16 have to give me an example, what I'm really getting at
17 is lots of people say "I don't care what the law is, if
18 a person is guilty of murder they ought to be executed
19 period."

20 Other people say, "No. It depends on
21 the facts, it could either be a death sentence or I could
22 agree with a life sentence depending on what I hear."

23 So are you telling me that you could go
24 with a life sentence if you thought it appropriate and
25 if you thought it appropriate you could answer questions

1 that -- in a way that would result in the death penalty?

2 THE POTENTIAL JUROR: I
3 believe I could.

4 THE COURT: Thank you, ma'am.
5 Mr. Townsend.

6
7 VOIR DIRE EXAMINATION

8 BY MR. TOWNSEND

9
10 Q Ms. Hollingsworth, I am Richard Townsend who
11 represents the State of Texas and Morris County in this
12 case and Mr. Lee is normally with me, he's not here
13 today.

14 I'm going to ask you some questions and
15 as the Judge said, there's no right or wrong answer to
16 those questions, we are just asking your opinions.

17 The Defense will ask you some questions
18 a little later at their proper time and they are
19 basically seeking the same thing, to find out what your
20 opinion is.

21 We are actively seeking the death
22 penalty in this case and so a lot of the questions I will
23 be asking you will relate to the death penalty and how
24 that is done in Texas and your feeling about the law in
25 the regard.

1 Your feelings that you have expressed
2 here about the death penalty after reading your
3 questionnaire, are those opinions that you pretty much
4 held all of your life since you were an adult anyway or
5 has your opinion changed at any point in your life?

6 A Maybe it has changed at times and after the day
7 I was called for jury duty the first day in October I
8 really did a lot of thinking about the death penalty and
9 I believe I am honest with you.

10 I had a question in my heart, do I have
11 the right to condemn another to death and then I reasoned
12 with myself for quite awhile and we must obey the law of
13 the land, that must be obeyed is the way I feel.

14 Q My question, since you have said that, let's
15 just assume for the moment that we have presented a case
16 to you that you believe based on the evidence and based
17 on the law, and we'll talk some more about the law and
18 exactly what the laws are, law is in Texas a little later
19 but let's just presume that we have presented a case to
20 you that we believe based on the law is appropriate for
21 the death penalty and you are a member of the jury; could
22 you vote in such a way as to give the defendant in a
23 capital murder case the death penalty if you felt the
24 facts were appropriate?

25 A Yes, sir.

1 Q Let me talk to you a little bit about murder
2 in Texas, there are basically two types of murder, one
3 being non-capital murder or what I call "plain murder"
4 and that's where someone has intentionally or knowingly
5 caused the death of an individual. And that's to say
6 it's without a legal justification or excuse like self
7 defense or accident, we are not talking about those
8 situations, we are talking about a situation where
9 someone has intentionally caused another person's death
10 without an excuse.

11 In Texas that is not punishable by the
12 death penalty but it's punishable by up to a life
13 sentence.

14 On the other hand capital murder is that
15 same kind of murder where there has been an intentional
16 causing of a death plus something else. And that plus
17 something else can be the murder of a police officer or
18 fireman in the line of duty, it can be the murder in the
19 commission of rape or kidnapping.

20 And those situations, assuming those can
21 be proved, that is what is called "capital murder" in
22 Texas and it's punishable by either a life sentence or
23 the death penalty. Those are the only two possible
24 punishments.

25 And there is a sheet of paper up there,

1 I believe it's marked "Exhibit 3", it's the indictment
2 in this case, if you would --

3 THE COURT: The next one.
4 (Indicating)

5 THE POTENTIAL JUROR: This
6 one? (Indicating)

7 THE COURT: That's that one
8 right there. (Indicating)

9 MR. TOWNSEND: If you would
10 read over that and then I will talk to you about it.

11 Okay. Ms. Hollingsworth, that comes off
12 the indictment in this case, can you see from reading
13 that indictment that if the State could prove all that
14 that that would be a capital murder rather than just what
15 I call the "plain murder" because of the murder
16 allegation as well as the allegation of robbery?

17 THE POTENTIAL JUROR: Yes,
18 sir.

19 Q (BY MR. TOWNSEND) Okay. That is the
20 indictment in this case.

21 From here on out basically what we will
22 be talking about, it's not so much particularly this
23 capital murder case but just capital murder cases in
24 general.

25 The kind of person we have to have for

1 our jury service in a case like this is the kind of
2 person who can keep an open mind throughout the trial
3 first as to the guilt or innocence of the defendant and
4 then as to whether the appropriate punishment should be
5 a life sentence or the death penalty.

6 You know, we have talked to jurors in
7 the past who have expressed the feelings that they just
8 did not believe in the death penalty and could never vote
9 in such a way to give someone the death penalty.

10 Well, you can see if they have that
11 opinion they basically wouldn't be giving the State a
12 fair trial because their mind is already made up as to
13 what the punishment should be.

14 On the other hand, you know, there are
15 people who say, "Well, if a person is guilty of capital
16 murder then automatically I'm going to vote for the death
17 penalty."

18 You see, they are not giving the Defense
19 a fair trial because they are not leaving their mind open
20 to consider both possible punishments.

21 Do you believe you could keep your mind
22 open and consider both possible punishments until then?

23 A Yes.

24 Q Capital murder trials fall in two phases, one
25 phase is the guilt and innocence phase and that's where

1 you just basically decide the defendant is guilty or not
2 guilty and just "Did he do it" then you get -- if the
3 defendant is found guilty then you get into that second
4 phase of the trial which is called the punishment phase
5 and that's where you decide whether the appropriate
6 punishment should be the life sentence or the death
7 peantly.

8 So during that first phase of the trial
9 your only concern at that time, "Is the defendant guilty
10 or not guilty?"

11 At that point you have no reason to be
12 concerned with whether the appropriate sentence is a life
13 sentence or death sentence. You will make that decision
14 later.

15 Are you with me on that?

16 A Yes.

17 Q Okay. There's a sheet of paper up there, I
18 call it a "flow chart", looks kind of like this.

19 Have you got that?

20 A (Indicating)

21 Q I'm going to go over this with you and that
22 kind of shows you how a capital murder trial goes. You
23 start at the top of the page, you are going to hear --
24 that's the guilt and innocence phase of the trial -- you
25 are going to hear evidence and that evidence is going to

1 relate to whether the defendant is guilty or not guilty.

2 At the end of hearing all that evidence
3 you are going to -- the jury will decide their verdict.
4 If the verdict is not guilty the trial is over, everybody
5 goes home.

6 If, on the other hand, the jury decides
7 that the defendant is guilty then you are going to go to
8 that next phase of the trial, that's what I call the
9 punishment phase down in the middle of the page.

10 At that point you are going to hear more
11 evidence but this evidence is not going to relate to
12 whether the defendant is guilty or not guilty because you
13 have already decided that, this evidence is going to
14 relate to -- what it will be, evidence presented to help
15 you and guide you in a way to help you make your decision
16 to whether the appropriate punishment should be a life
17 sentence or death sentence, it could be any type of
18 evidence, it might be psychological testimony, it might
19 be evidence of family background of the defendant, it
20 might be evidence of the defendant's mental ability, it
21 might be evidence of the defendant's prior criminal
22 activity, prior bad acts by the defendant, it could be
23 just almost anything.

24 But anyway, that evidence is something
25 that before you deliberate and decide whether the person

1 should receive a life sentence or death sentence you will
2 hear all that evidence in deciding whether the defendant
3 should receive life sentence or the death penalty, you
4 can consider, you don't have to shut your mind out but
5 all that stuff that you heard during the guilt or
6 innocence phase of the trial, you can consider that in
7 your mind as well.

8 But you have also got to consider this
9 evidence that is presented during the punishment hearing.

10 Do you believe that you could do that?

11 A I believe.

12 Q Okay. After you have heard all that evidence
13 then you are going to decide your answer to Special Issue
14 #1.

15 Now, Special Issue #1 is going to be a
16 question that you are going to answer either "Yes" or
17 "No", and we'll go over that question in a few moments
18 but first you are just going to answer that "Yes" or
19 "No."

20 If you answer it "No" the defendant is
21 automatically going to receive a life sentence, if you
22 answer that question "Yes" then you go down to Special
23 Issue #2.

24 When you get to Special Issue #2 again
25 you go back and mentally sort of go back and reconsider

1 all that evidence that you heard during the guilt and
2 innocence phase, you kind of reconsider all the evidence
3 that you heard, if you answer it "Yes" then the defendant
4 receives a life sentence, if you answer "No" the
5 defendant will receive the death penalty.

6 So even though you are in effect
7 answering questions "Yes" and "No", you are not really
8 saying, "Okay, let's give a life sentence or let's give
9 him the death penalty", you are just answering questions
10 but you are going to know what your answers mean, you
11 know, you are going to know if you answer Number One
12 "Yes" and Number Two "No" this defendant is going to get
13 the death penalty.

14 If you answer them in any other way the
15 defendant will get a life sentence.

16 Do you feel like you are -- are you with
17 me right now? Is there anything that you are confused
18 about?

19 A I feel like I am with you.

20 Q If I haven't confused you yet I will confuse
21 you on these questions here.

22 If you will look there is another sheet
23 that is marked "Special Issues." (Indicating)

24 A Okay.

25 Q Okay. Read Special Issue #1 and then we will

1 talk about it.

2 Okay. Special Issue #1 basically
3 relates to the future dangerousness of the defendant, is
4 that kind of the way it reads to you?

5 A Yes, sir.

6 Q There's some terminology there I want to go
7 over with you a little bit, first that word on -- first
8 on the first line it says "Do you find from the evidence
9 beyond a reasonable doubt", of course we have to prove
10 the defendant guilty to you beyond a reasonable doubt,
11 the State also has to prove Special Issue #1 to you
12 beyond a reasonable doubt.

13 Okay. Now, Special Issue #1, we have
14 got to prove to you beyond a reasonable doubt, look at
15 that third word on the second line, the word
16 "probability."

17 In Texas "probability" is defined by law
18 as "more likely than not."

19 Which I'm going to give a number value
20 to which means that must barely over 50 percent, just a
21 little bit more likely than not, is that about the way
22 that you would define "probability" or is that something
23 that you would agree with?

24 A Very close.

25 For instance, once someone had done

1 something criminal they would do it again, that's what
2 I would -- the chances or of them repeating the crime.

3 Q Now, what you consider to be "more likely than
4 not" would be up to you, you know.

5 After you heard all the evidence then
6 you would decide based on all the evidence is it more
7 likely, have we proven to you beyond a reasonable doubt
8 that it's more likely than not?

9 Are you with me?

10 A Yes.

11 Q Okay. Then at the end of the sentence there
12 the second line it says "criminal acts of violence."

13 Of course a capital murder is a criminal
14 act of violence but there's a lot of other crimes out
15 there, some of those are criminal acts of violence such
16 as attempted murder or rape and assault, others while
17 criminal acts they are not criminal acts of violence, for
18 instance, forgery or theft, certainly it's a criminal act
19 but it's not a criminal act of violence.

20 And we are required to prove to you that
21 it's more likely than not that the defendant would commit
22 criminal acts of violence.

23 Then the last word in Special Issue #1
24 is that word "society."

25 I think you and I, most of us think of

1 "society" as out on the street, in our home, that sort
2 of thing. But actually the law says that "society" is
3 basically "the people" and that's all the people, even
4 if those people are in the penitentiary, you know, those
5 people are considered part of society also as well as the
6 guards, as well as the nurses, the doctors and of course
7 the people out on the street and in their home, too.

8 So we are not required to prove to you
9 that more likely than not that he would commit criminal
10 acts of violence that would constitute a continuing
11 threat to people outside the penitentiary or inside the
12 penitentiary, just that he would be a threat to folks
13 anywhere irregardless of whether they were in or out.

14 Okay. After you consider Special Issue
15 #1 -- first of all when you are considering Special Issue
16 #1 you can certainly go back to that first part of the
17 trial, that guilt or innocence phase and sort of go over
18 that in your mind again and say, "Now, is there evidence
19 there that makes me believe that he would be a continuing
20 threat to society?"

21 You can consider that and that's --
22 that's not only something that you can do but something
23 that you probably should do. But you have also got to
24 consider that evidence during the punishment hearing.

25 And when I say that I have had people

1 say that, "Well, if I find a person guilty of capital
2 murder I am automatically going to answer 'Yes' to
3 Special Issue #1."

4 You see, they have closed their mind to
5 this punishment hearing.

6 The kind of jurors we have to have are
7 those kind of jurors that can keep an open mind
8 throughout the trial and throughout the punishment
9 hearing and then decide their answer on Special Issue #1
10 based on not just that first part of the trial but all
11 the evidence during the punishment hearing also.

12 Could you do that?

13 A Through the first part of the trial it was
14 proven to me beyond a shadow of a doubt I'll be more --
15 honestly -- I would be more -- like -- I'll be honest
16 with you, I would think that person would be a repeat
17 offender, do other criminal deeds in society.

18 Q You would be more likely to believe that?

19 A Yes.

20 Q That's okay, Ms. Hollingsworth, if that's the
21 way you feel about that.

22 But what we need to understand from you,
23 would you consider that evidence during the guilt or
24 innocence phase, and you said you would, but what we need
25 to understand from you, would you give consideration,

1 would you listen and consider that evidence during the
2 punishment hearing and, you know, once you got it all
3 together then consider all the evidence and then make up
4 your mind on Special Issue #1 after listening and
5 considering that evidence during the punishment hearing
6 as well or would you just automatically decide after
7 hearing the guilt or innocence evidence, well, I'm not
8 listening to anything else, my mind is made up?

9 Do you see what I'm saying?

10 A Yes, sir.

11 Q Okay. So could you consider that evidence and
12 Special Issue #1 before making your decision?

13 A I think so. That I could consider it but
14 that's the way I oftentimes feel about criminals, a
15 criminal act of violence, that that person would repeat
16 it.

17 That's the way I feel about it.

18 Q And that's fine, Ms. Hollingsworth, there's a
19 lot of people that feel that way and in order to follow
20 the law however you feel about that is fine as long as
21 you are willing to keep an open mind and listen to that
22 evidence that you hear during the punishment hearing and
23 weigh that evidence along with this other evidence before
24 making your decision and not make your -- because you
25 found the defendant guilty of capital murder you have got

1 to be able to -- because that's one issue there, is he
2 guilty or not, you have made that decision when you get
3 to Special Issue #1, Special Issue #1 is a separate
4 issue, it's not the same question as "Is he guilty or
5 not", the question is, "Is he a threat to society",
6 basically.

7 You have got to be willing to listen to
8 it all and then make your decision, not make your
9 decision then say, "Well, I made my mind up on Special
10 Issue #1 but I will go ahead and listen to this other
11 stuff anyway", can you withhold your decision on Special
12 Issue #1 until you have heard everything?

13 A Yes, sir. I believe I -- I can. You have to
14 be open and hear all of it.

15 Q If you will now read Special Issue #2 and then
16 we'll talk about it.

17 Okay. That is sometimes confusing
18 wording there.

19 Special Issue #2 I think basically says
20 you found the person guilty of capital murder, you have
21 decided that he's a continuing threat to society, if you
22 decided that he wasn't you wouldn't even be looking at
23 that Special Issue so you have made those two decisions.

24 Now you have got a third decision to
25 make but on the third decision whereas the first two

1 decisions the State has had to prove that to you beyond
2 a reasonable doubt, on this third decision or Special
3 Issue #2 that's not something we have to prove to you
4 beyond a reasonable doubt, that's just basically your
5 opinion and it's your opinion based on all the evidence
6 you heard during the guilt or innocence phase and all the
7 evidence you heard during the punishment phase whether
8 it came from this side of the table or that side of the
9 table, it doesn't matter where it came from, is there
10 something in the evidence that you heard that
11 sufficiently mitigated the blameworthiness of the
12 defendant for this crime?

13 And that's not to say excuse the
14 defendant for the crime but reduces blame in a sufficient
15 amount to you that you believe he should receive a life
16 sentence rather than the death penalty.

17 And what is "sufficiently mitigating"

18 What would sufficiently reduce his
19 blameworthiness to you and nobody can answer that for
20 you, that's strictly your opinion and, you know,
21 everybody has different opinions. You are going to hear
22 all this evidence during the guilt or innocence phase,
23 you are going to hear all this evidence during the
24 punishment hearing and there may not be anything there
25 that you think is sufficiently mitigating but someone

1 else might or you might find something that reduces his
2 blame to you but maybe another person might not feel the
3 same way.

4 For instance, if there was evidence
5 presented in a capital murder case that the defendant was
6 mentally retarded, now, that might convince one person
7 that that should reduce his blame to the point that he
8 would receive a life sentence rather than the death
9 penalty while other persons might not think that that was
10 important, same thing if a person was intoxicated when
11 the offense took place, one party might -- one juror
12 might feel like that was important enough that that
13 reduced his blame, another person might say, "Well, he's
14 still responsible for his behavior anyway."

15 So, you know, I can't tell you what
16 piece of evidence it might be or I can't tell you what
17 combination of evidence it might be that might make you
18 feel like the defendant deserved a life sentence rather
19 than the death penalty but that's just something that
20 each juror has to weigh in their own mind.

21 And the jurors don't necessarily have
22 to find that a sufficiently mitigating circumstance --
23 they don't have to agree on what that circumstance is,
24 one person might think it's this, one person might think
25 it's that but the important thing is that if you have

1 answered -- I have had jurors say this, "Okay. Now, I
2 find a person guilty of capital murder, I decided that
3 they are a continuing threat to society, now on Special
4 Issue #2 I am automatically going to answer that 'No' so
5 he will get the death penalty."

6 You see, they are not qualified jurors
7 because they are not keeping a fair and impartial state
8 of mind and keeping an open mind as to all the evidence
9 before deciding their answer on Special Issue #2, they
10 are just saying, "If I answer 'guilty' and I answer 'Yes'
11 to Number One I'm not really going to consider what the
12 proper answer should be to Number Two, I'm just going to
13 answer it 'No' so he will get the death penalty" but
14 Number Two is a separate question just like the other two
15 are separate questions.

16 Could you hold your determination as to
17 the answer to Special Issue #2 until you have time and
18 have had a chance to consider what the appropriate answer
19 should be and just give whatever the appropriate answer
20 is, what it calls for, just let the chips fall where they
21 may.

22 The answer should be based on your
23 opinion, if the answer should be "Yes" you answer "Yes",
24 give the person a life sentence and if, based on your
25 opinion the answer should be "No" you would answer "No"

1 and the defendant would receive the death penalty.

2 Could you do that?

3 A It would be an opening of my mind, I would
4 really have to open my mind up to do that. I have some
5 very strong beliefs about some things and I mean I would
6 have to open my mind and really listen to the whole case
7 for this Special Issue #2.

8 Q Do you believe you could open your mind and
9 listen and make your decision based on the evidence and
10 not base it on anything but the evidence?

11 A I would have to base my decision on the
12 evidence and what I felt in my heart was right.

13 Q Okay. And that's basically, ma'am, that's what
14 Special Issue #2 is, it's basically just your opinion.

15 Now, there is one thing about that
16 opinion and about Special Issue #2 that is important and
17 that is during that punishment hearing you may hear, like
18 I said, all sorts of different kinds of evidence and as
19 a juror it's your right and your duty to decide when that
20 evidence is truthful, important, untruthful, unimportant
21 so basically once you have listened to the evidence and
22 considered it you are supposed to make those decisions
23 but where we have trouble with people, sometimes a person
24 will say something like, "Well, if they put a
25 psychiatrist up there on the stand I'm just not going to

1 believe him. I don't believe in psychiatrists, I don't
2 believe in all that mental stuff and I'm not going to pay
3 any attention to that evidence and I'm not going to
4 listen to it at all."

5 Now, it's perfectly okay for you to
6 listen to that evidence and consider it and then decide
7 you don't really think that is important but, on the
8 other hand, if you are going to just -- not going to
9 listen to it, if you are just going to reject it out
10 without even having given the witness a fair chance then
11 you are not a qualified juror.

12 Do you believe that you could take
13 whatever testimony it was, whether it was from a
14 psychiatrist or the defendant's mother or the defendant
15 or a police officer or whoever it was and listen to this
16 evidence, consider it and then make your decision as to
17 whether you thought it was important or not important?

18 A Yes, sir. I do.

19 Q Okay. Another consideration in deciding the
20 answer to Special Issue #1 and Issue #2 is in this
21 particular capital murder case if the defendant w e r e
22 found guilty according to the law in Texas at this time
23 he would be eligible for parole after 35 years, 35
24 calendar years, that doesn't mean that he would get
25 parole but he would be eligible to be considered for

1 parole. He might get parole after 35 years, he might
2 never get parole but the important thing to remember is,
3 and I believe the Judge will instruct you in his written
4 instructions when you go to deliberate, to this effect
5 and that is this; if you are back there considering and
6 trying to decide the answer to Special Issue #1 or
7 Special Issue #2 you are to consider that a life sentence
8 is a life sentence, the death penalty is the death
9 penalty and not in any way use the possibility of parole
10 in making your determination because that's not something
11 that you would have evidence on, that's not something
12 that we can tell you with any certainty.

13 Would you be able to put that 35 years
14 and the possibility of parole after 35 years out of your
15 mind?

16 You know, I shouldn't say "out of your
17 mind", we can't expect you to put these things out of
18 your mind but simply just to set it aside and say, "Okay,
19 I'm going to answer Special Issue #1 'Yes' or 'No' based
20 on what the evidence is, I'm going to set this parole
21 aside for the moment until I have made my decision on
22 Special Issue #1", the same way with Special Issue #2,
23 could you do that?

24 A I think I could.

25 Q Well, --

1 A That's a question that I'm really having to sit
2 and think about.

3 Q Ms. Hollingsworth, this -- I know these
4 questions are questions that you have not thought about
5 probably --

6 A I never have.

7 Q -- or some of them.

8 And they are also questions that are not
9 always that easily answered but unfortunately we have to
10 have answers today.

11 But let me go back on parole; parole
12 basically, see, from a fairness standpoint parole is not
13 something fair for you to be considering for several
14 reasons, one; it's not evidence because the evidence has
15 to come during the trial so you are not to consider it
16 for that reason and, too; we don't know what parole is
17 going to do, we are not telling you that the defendant
18 would be paroled in 35 years, we don't know that he would
19 ever be paroled or not, the law is -- we are just saying
20 the law is that he would be eligible to be considered in
21 35 years but anyway as a juror you are asked to answer
22 Special Issue #1 and Issue #2 based strictly on the
23 evidence presented so even though whatever your feeling
24 might be about parole that is something that you are not
25 to consider in deciding whether he's going to be a

1 continuing threat to society.

2 For instance, that has nothing to do
3 with parole.

4 Either "Yes. He's going to be" or "No.
5 He's not going to be."

6 We have proved it to you or we haven't
7 proved it to you, it has nothing to do with parole.

8 Same way with Number Two; is there a
9 sufficient mitigating circumstance to reduce his moral
10 blame?

11 That has nothing to do with parole, that
12 is just strictly -- is there something to sufficiently
13 reduce his blame, strictly to give him a life sentence
14 instead of the death penalty, either "Yes. There was"
15 or "No. There wasn't" and parole has nothing to do with
16 it.

17 So to be a qualified juror you have got
18 to be able to keep an open mind and set that aside.

19 And you said you "think you could do
20 it", what we need to know, and I know this is difficult
21 but we need, you know, it's a common speech pattern I
22 guess for people to say "I think I could" or "I don't
23 know if I could or not" or, you know, but basically what
24 we need to know is "Yes. I can set that aside" or "No.
25 I can't."

1 And I know that's a difficult question.

2 A I believe I could all I -- yes. I believe I
3 could to be truthful with you.

4 THE COURT: Thirty minutes.

5 MR. TOWNSEND: Thank you, Your
6 Honor.

7 Let me talk to you just a little bit
8 about murder as opposed to capital murder; we talked a
9 little bit earlier about "plain murder" were someone has
10 intentionally caused someone's death, the range of
11 punishment in a murder case rather than being life or
12 death is anywhere from five years probation to 99 years
13 or life.

14 Of course a lot of murders are very
15 vicious and you might tend to go toward the 99 or life
16 on those -- excuse me -- other murders are more like what
17 you would call a mercy killing, are you familiar with
18 what a mercy killing is?

19 THE POTENTIAL JUROR: Yes.

20 Q (BY MR. TOWNSEND) Elderly people maybe?

21 A Yes, sir.

22 Q Very ill people?

23 In those situations you might consider
24 it for a lighter punishment but the important thing is
25 to follow the law. To be a qualified juror in a murder

1 case, not a capital murder you have got to be able to
2 consider that full range of punishment and that full
3 range of punishment goes from 99 to life to five years
4 probation.

5 And my question is; could you consider
6 the full range of punishment if you are a juror in a
7 murder case?

8 A Are you asking me could I consider 99 years
9 like a life sentence?

10 Q I'm not asking you whether you could give 99
11 or you could give five years probation, I'm simply asking
12 you, could you consider it all the way before making your
13 decision?

14 A Probably not. I am very staunch in my belief.

15 Q When you say "Probably not" I assume you are
16 like most people, if you have a problem with this you
17 don't have a problem with 99, you have a problem with
18 five years probation?

19 A Yes. I do.

20 Q Okay. Five years probation, keep in mind that
21 murder cases take all forms, you take a person who is 85
22 years old, their wife is dying of cancer, she is in a
23 great deal of pain, she begs him to pull the plug and he
24 pulls the plug.

25 What he has done is he has intentionally

1 caused another person's death so under Texas law even
2 though that is not the kind of murder that you and I
3 think of when we think of murder technically and legally
4 that is murder.

5 A Yes. Murder is murder.

6 Q Right. And there are other situations that you
7 might think of that might be similar where even though
8 it's a murder it's not the same kind of murder that we
9 normally think of and in order to be a qualified juror
10 you have got to be able to consider the full range of
11 punishment as I said.

12 When I say "Consider the full range of
13 punishment" that doesn't mean that you have to agree that
14 you would give 99 years without knowing what the facts
15 are or that you would agree to give five years probation
16 without knowing what the facts are, all you are -- all
17 we are asking you to do is could you consider that before
18 making your decision?

19 Now, your decision could be anything you
20 want it to be, you know, but you have got to be able to
21 consider that range of punishment before making your
22 decision, you know, you may consider it and decide "20
23 years" or you may consider the range of punishment and
24 decide "99" or you may consider "probation" but -- and
25 decide "probation" but you have got to keep an open mind

1 and consider that full range.

2 Do you believe that you could consider
3 the full range?

4 A I believe I could consider it. Yes.

5 Q And bear in mind we are not asking you to lock
6 into a 99 year sentence or lock in and say you would give
7 probation but that you would consider that full range of
8 punishment.

9 Do you think that you could do it?

10 A I think I would have to be open-minded enough
11 to do so.

12 Q Okay. You know capital murder cases -- let's
13 say that the indictment talked about the defendant has
14 committed -- first of all as to an indictment, I think
15 you understand from what the Judge said when you all were
16 here in October that an indictment is not evidence of
17 anything, the evidence comes in here, you couldn't --
18 wouldn't consider like what we showed you up there with
19 a copy of the indictment, you do understand that cannot
20 be used at all?

21 A Yes.

22 Q Okay. But the indictment is a charging
23 instrument and that instrument is basically used to let
24 the defendant know what he's charged with and it's also
25 used to get the case from the Grand Jury to trial.

1 The indictment in this case or in any
2 capital murder case charges murder, this one is murder
3 and robbery, we will use that for an example, it could
4 also be murder and rape, something like that, let's --
5 this one, let's just talk about one that says "murder and
6 robbery", do you understand that in order to find the
7 defendant guilty of capital murder we have to prove to
8 you that indictment and that means if the indictment says
9 "murder and robbery" that's what we have got to prove to
10 you.

11 If we prove to you something else, let's
12 say we proved to you murder and -- and, you know, I can't
13 imagine this happening, let's say we proved to you murder
14 and rape instead of murder and robbery, we -- we didn't
15 prove to you what was on this indictment, we proved to
16 you the murder, we didn't prove the robbery so you would
17 have to find that defendant not guilty of capital murder
18 but you found him guilty of murder because we did prove
19 the murder, we just didn't prove the other part.

20 If you are on a jury and feel like you
21 had a defendant there that was really a bad guy and you
22 felt like the State has proved the murder to you but
23 didn't prove the robbery could you find the defendant not
24 guilty of capital murder and find him guilty only of
25 murder?

1 A This is hard to answer.

2 Q Do you understand my question?

3 A I do.

4 Q In order to follow the law you have got to find
5 him guilty of what we proved.

6 A You are asking me could I find him guilty of
7 murder but not of capital murder?

8 Q Right. If that's what we proved to you

9 A If it could be proven to me but I would really
10 -- it would have to be proven, I am not really -- I mean
11 I am the type of person I want to see all the evidence
12 be proven to me instead of just, you know, saying it's
13 this way or that way.

14 Q Well, when I ask you these questions, ma'am,
15 I am assuming that we have proven what we say we can
16 prove.

17 Assuming that I can prove to you a
18 murder but I can't -- of course again we are talking
19 about hypothetical cases -- assuming that I can prove
20 -- I have alleged in the indictment a murder and robbery
21 but in fact the evidence at the trial shows that there
22 is clearly been proved to you beyond a reasonable doubt
23 that the defendant committed a murder but we failed to
24 prove to you that he committed a robbery, instead we
25 proved nothing or we proved rape, let's say, then

1 whatever we have proved if it doesn't kind of add up to
2 murder and robbery, if it just adds up to murder you have
3 to find the defendant guilty of murder and not capital
4 murder.

5 Could you do that?

6 A To be real honest with you I do not know. I
7 would have to think about it for a little bit.

8 Q Well, --

9 A Just sitting here and listening and give you
10 a real fast answer --

11 Q Do you understand that the burden of proof is
12 on the State?

13 A Yes. I understand that.

14 Q And you could not find the defendant guilty of
15 something that we didn't meet our burden on, could you?

16 A That's true. But if you gave me all the proof
17 committed a murder?

18 Q Right.

19 A I would have no doubt in my mind that he did.

20 Q Okay. If we proved that to you you would find
21 him guilty of murder?

22 A Yes, sir.

23 Q But we didn't prove the robbery aspect of it
24 so you could not find him guilty of capital murder, could
25 you?

1 You could find him guilty of murder but
2 not capital murder?

3 A I could find that person guilty of murder.

4 Q See, that's what we call a "lesser offense",
5 you know, capital murder being the more serious offense
6 but we didn't quite prove that because we didn't prove
7 the robbery but we did prove the lesser included offense
8 which is murder so it would be your duty to find him
9 guilty of murder, not capital murder because we failed
10 to prove that robbery.

11 Are you with me?

12 A I am with you. It's just a little -- it's
13 confusing me, okay, you have found this person guilty of
14 murder?

15 Q Yes.

16 A But you didn't have the proof of the robbery?

17 Q Yes. We didn't prove that to you beyond a
18 reasonable doubt.

19 A You did not prove it beyond a reasonable doubt,
20 a doubt, but yet you have proved to a jury or person that
21 this murder was committed, to me that is still murder.

22 Q "It's still murder?"

23 A It's not robbery, that's what you are saying?

24 Q Yes. It's still murder so you would find the
25 person guilty of murder but on the other hand you could

1 not find him guilty of capital murder because we failed
2 to prove to you beyond a reasonable doubt the robbery?

3 You would be finding him guilty -- you
4 wouldn't be turning him loose, you would be finding him
5 guilty of murder, it just wouldn't be capital murder.

6 I think we are missing each other
7 somewhere.

8 A No. It's my opinion -- what my opinion is,
9 okay, supposedly this person robbed a person then
10 murdered this person, murder is murder?

11 Q Right.

12 A Regardless of whether it was robbery or under
13 what circumstance, when a life is taken a life is taken
14 is what I'm saying.

15 Q And you would find that person guilty of murder
16 or capital murder?

17 A "Capital murder" because it's murder. That's
18 the way I feel.

19 I'm not sure of all these legal terms
20 but, you know, it's kind of fast, I'm not sure of all the
21 legal terms.

22 MR. TOWNSEND: Approach the
23 bench, Your Honor?

24 THE COURT: Ma'am, would you
25 mind stepping out for just a minute, let me have a

1 discussion with these layers.

2 THE BAILIFF: Watch your step
3 there.

4
5 (The following occurred outside the
6 presence and hearing of the potential juror:)

7
8 THE COURT: On the record.

9 MR. OLD: Challenge her for
10 cause in that she has expressed a prejudice against the
11 defendant or a prejudice against the law and she has
12 stated that she would not follow the law, that she would
13 find a man guilty of capital murder even though it was
14 not proven to her beyond a reasonable doubt all the
15 elements of the offense.

16 THE COURT: Sustained.

17 Inform Ms. Hollingsworth we appreciate
18 her appearance and she is excused then we will take a
19 short break and proceed on to Mr. Thurman.

20
21 (Recess.)

22
23 (The following occurred in the presence
24 and hearing of the potential juror:)

1 THE BAILIFF: Watch your step.

2

3 JAMES SETH THURMAN, Potential Juror #31,
4 was called as a Potential Juror and, having been
5 previously sworn by the Court, testified as follows:

6

7 THE COURT: How are you doing,
8 Mr. Thurman?

9 THE POTENTIAL JUROR: All
10 right.

11 THE COURT: Go ahead and take
12 your seat.

13 You are "James Thurman?"

14 THE POTENTIAL JUROR: Yes,
15 sir.

16 THE COURT: This is juror 37.

17 Mr. Thurman, I am Gary Stephens and I
18 am presiding over the jury selection and trial in this
19 case.

20 We have two District Attorneys working
21 on this case, the lead attorney is Mr. Richard Townsend,
22 he's from Morris County.

23 THE POTENTIAL JUROR: Okay.

24 THE COURT: We have two
25 Defense Attorneys present in Mr. Bird Old, III.

1 MR. OLD: How are you doing,
2 sir?

3 THE POTENTIAL JUROR: Nice to
4 meet you.

5 THE COURT: His partner for
6 the case is Lance Hinson, he will probably be along
7 shortly.

8 Mr. Townsend's partner for the case is
9 Randall Lee from Cass County, he's in trial on another
10 case and won't be here today.

11 By the way, you said that you did know
12 the District Attorney, which one did you know?

13 In your questionnaire you said you knew
14 either Randall Lee or Richard Townsend?

15 THE POTENTIAL JUROR: It was
16 Richard Townsend.

17 THE COURT: Do you know him
18 personally?

19 THE POTENTIAL JUROR: No.

20 THE COURT: Is that --

21 THE POTENTIAL JUROR: Just
22 know of him.

23 THE COURT: Now, Mr. Thurman,
24 the lawyers have read your questionnaire and they are
25 familiar with your answers.

1 What they are going to do today is talk
2 to you about some of those answers and they are also
3 going to talk to you about the principles of law involved
4 in a death penalty case.

5 You will be asked a lot of questions and
6 the answers will let us know whether or not to put you
7 on the jury.

8 THE POTENTIAL JUROR: All
9 right.

10 THE COURT: There aren't any
11 right or wrong answers and there are no right or wrong
12 opinions.

13 A lot of people believe that they need
14 to come up here and agree with the law, even if they
15 don't know what the law is they try to figure out what
16 kind of answer, they want to try and answer
17 appropriately. That's not what we want.

18 You have proven you are a good citizen
19 by showing up for your jury service and filling out this
20 questionnaire and coming back for the interview.

21 We don't want you to violate your
22 conscious or your opinions by trying to agree with a law
23 you don't agree with.

24 If you don't agree with something just
25 tell us.

1 We have found that most people can agree
2 and follow the law but we have also found that ability
3 to follow the law doesn't always make you a good juror
4 in a death penalty case. So we want to know -- know
5 about whether or not you can follow the law, we want to
6 know what you think about the laws and the issues we are
7 going to discuss.

8 We may use some fact situations to
9 illustrate some issues or points of law and I want you
10 to know that if we do make up some facts we are not
11 talking about Mr. Wardlow's case.

12 In fact I forgot to introduce Mr.
13 Wardlow, I believe that is Mr. Wardlow, he's the person
14 charged. (Indicating)

15 But if we -- if we are talking about
16 facts don't associate those facts with this trial, we are
17 not permitted to talk about the facts of this case,
18 that's what the trial is for but sometimes it's easier
19 to illustrate a point by making up some facts.

20 And again, sir, I can't stress enough
21 that it's your opinions that are important, not ours, not
22 what you think we want to hear, it's what you truly
23 believe.

24 You told us in this questionnaire that
25 you knew something about the facts of this case, could

1 you tell me, sir, what you have heard?

2 THE POTENTIAL JUROR: Whenever
3 the -- I heard it, I think was it in the newspaper?

4 Something about that they said that a
5 guy and his girlfriend had broke in a house and killed
6 a man, and old man and taken his car and that's what I
7 know about it.

8 THE COURT: Did you know the
9 victim, the alleged victim of this crime?

10 THE POTENTIAL JUROR: No.

11 THE COURT: Do you know Mr.
12 Wardlow?

13 THE POTENTIAL JUROR: No.

14 THE COURT: Did you ever read
15 about or hear about Mr. Wardlow in connection with this
16 case before the date that you all came down here and I
17 first talked to you?

18 THE POTENTIAL JUROR: No. The
19 first time I seen him was at the initial jury call.

20 THE COURT: Have you heard
21 enough to make your mind up whether or not Mr. Wardlow
22 is guilty or is your mind still open?

23 THE POTENTIAL JUROR: My mind
24 is still open.

25 THE COURT: Can you presume

1 him to be innocent as you sit here and he sits here
2 today?

3 THE POTENTIAL JUROR: Yes.

4 THE COURT: Okay. Now, the
5 trial will not begin until after the first of the year,
6 we are hoping to start shortly -- well, the first week
7 in January, it may not be the first week in January but
8 it will be shortly after the first of the year.

9 The trial will last probably two weeks.

10 Do you know of any reason that you could
11 not sit as a juror for a two-week period in January of
12 next year?

13 THE POTENTIAL JUROR: No, sir.

14 THE COURT: Do you have any
15 questions of us?

16 THE POTENTIAL JUROR: No.

17 THE COURT: Mr. Townsend.

18
19 VOIR DIRE EXAMINATION

20 BY MR. TOWNSEND

21
22 Q Mr. Thurman, I'm Richard Townsend, I represent
23 the State and Morris County in this case along with Mr.
24 Lee who is not present today.

25 And I'm going to ask you some questions

1 about the death penalty and some questions just about law
2 in general and see what your thoughts and ideas are.

3 And if you don't understand my question
4 because of the way I have worded it or just because I
5 mumble let me know.

6 A All right.

7 Q The State through the District Attorney's
8 Office in Morris County is seeking the death penalty in
9 this case and the death penalty in Texas is only
10 available in cases involving capital murder.

11 And of course that's what the charge is
12 in this, in this situation and your finding as a juror
13 as to whether the death penalty should be appropriate or
14 a life sentence should be appropriate will depend on the
15 facts and the evidence presented and how you assess those
16 facts.

17 Let's just assume for the moment that
18 you have listened to all the evidence during this trial
19 and first of all early in the trial have found the
20 defendant guilty of capital murder and you have heard
21 that evidence that is presented to you during a
22 punishment hearing and after hearing all that stuff you
23 have decided that the appropriate sentence for that
24 defendant would be a death penalty, can you personally
25 vote that way?

1 A If the evidence led to it and the -- and I was
2 sure in my mind that person's mind was clear, you know,
3 not having any kind of mental, you know, something wrong
4 with him or something, you know, I would be for the death
5 penalty. Yes.

6 Q Okay. So you are saying if the facts and the
7 evidence were appropriate to you or in your opinion that
8 you could do it?

9 A Yes.

10 Q Okay. I'm going to go through a little more
11 with you about murder in Texas and the law and capital
12 murder.

13 First of all in Texas there are two
14 kinds of murder basically, one is what we -- what I call
15 "plain murder" or non-capital murder, the most a person
16 could be punished for that is 99 years to life.

17 That is where someone has intentionally
18 caused the death, that is where someone has intentionally
19 or knowingly caused the death of another person. That
20 is to say it was done without any legal excuse or
21 accident or something like that, that they have
22 intentionally caused another person's death, that is
23 murder.

24 But in order for it to be capital murder
25 you have got to have that plain murder plus something

1 else and that plus something else has to be one of
2 several sorts of conditions, one being murder of a police
3 officer or fireman in the line of duty and another,
4 murder that takes place during the commission of a
5 robbery or rape or kidnapping or something of that
6 nature.

7 If you will there is a sheet up there
8 that's marked "Exhibit 3" I believe, if you will look at
9 that.

10 THE COURT: It's the next one
11 under the one you have got. (Indicating)

12 THE POTENTIAL JUROR: Okay.

13 MR. TOWNSEND: Read that to
14 yourself and then we'll talk about it.

15 THE POTENTIAL JUROR: All
16 right.

17 Q (BY MR. TOWNSEND) Okay. Mr. Thurman, can you
18 see if the State were able to prove everything that is
19 in that indictment -- that is a copy of the indictment,
20 by the way -- if the State were able to prove all that
21 can you see where that would be capital murder rather
22 than just murder because it's got murder plus that other
23 element I talked about which is that it was during the
24 commission of a robbery?

25 Are you with me on that?

1 A Yes.

2 Q Okay. The kind of juror we have to have in
3 capital murder cases are those type jurors who after they
4 find a defendant guilty of murder or "capital murder",
5 excuse me, they can keep an open mind as to what the
6 proper punishment should be.

7 The punishment in Texas for capital
8 murder is one of two things, it's either a life sentence
9 or the death penalty, there are no other options.

10 And after a person had been found guilty
11 of capital murder then you are going to have another
12 hearing that is called "the punishment hearing", at that
13 time you would hear more evidence and that evidence will
14 have to -- will relate to not whether the person is
15 guilty or not because you have already made this decision
16 but just relates to what the proper punishment should be.

17 Do you believe that you could keep an
18 open mind after you found a person guilty and not make
19 up your mind as to whether the life sentence or death
20 penalty was appropriate, could you keep an open mind and
21 not make your decision on that until you have heard all
22 the evidence at the punishment hearing?

23 A That would be hard to do but I could do it.
24 That would be --

25 Q If you will there is what I call a "flow chart"

1 up there, it looks kind of like this. (Indicating)

2 A Yes.

3 Q I'm going to run down kind of how a capital
4 murder case goes, first you have a -- the guilt or
5 innocence phase, you are going to hear evidence as to
6 guilt or innocence of the defendant, at the end the jury
7 will deliberate, if the person is found not guilty the
8 trial is over, if the person is found guilty then you go
9 to that next phase which is called "the punishment
10 phase", then is when you are going to hear all this other
11 evidence that I was talking about.

12 And that might be evidence presented by
13 the State or maybe evidence presented by the defendant
14 and it will relate to what the proper punishment could
15 be.

16 It could be evidence from a
17 psychologist, it could be evidence about the family
18 history of the defendant, it could be evidence of his
19 religious background, evidence of retardation, evidence
20 of alcoholism, evidence of prior bad acts by the
21 defendant, evidence of prior criminal activity by the
22 defendant, it could go on and on. It could be any number
23 of type things you might hear.

24 After you have heard that evidence then
25 you will decide the answer "Yes" or "No" to Special Issue

1 #1.

2 All right. You don't know what this
3 Special Issue is but it's a question that you answer
4 "Yes" or "No" and we'll go over that in a minute.

5 If you answer that question "No" the
6 defendant automatically is going to receive a life
7 sentence, if you answer that question "Yes" then you to
8 go Special Issue #2 which is another "Yes" or "No"
9 question, if you answer Number Two "Yes" then the
10 defendant would receive a life sentence, if you answer
11 it "No" the defendant receives the death penalty.

12 So you can see you are not just going
13 to go back there and say, "Well, how many want to give
14 him a life sentence, how many want to give him a death
15 penalty", you are not going to decide that at all. You
16 are just going to answer those Special Issues "Yes" or
17 "No."

18 Now, you are going to know because I
19 just told you if you answer Number One "Yes" and Number
20 Two "No" he's getting the death penalty.

21 A Yes.

22 Q If you answer them any other way then the
23 defendant would receive a life sentence.

24 Are you with me so far?

25 A Yes.

1 Q All right. If you will there is a sheet that
2 says on top "Special Issues", do you have that sheet?
3 (Indicating)

4 A All right. All right.

5 Q Read Special Issue #1 to yourself and then
6 we'll talk about it.

7 A Okay. The whole sheet or just the top?

8 Q Just Special Issue #1.

9 A I read it.

10 Q Special Issue #1 basically talks about the
11 future dangerousness of the defendant, is that kind of
12 the way it looks to you?

13 A Yes, sir.

14 Q Okay. I'm going to talk to you about a little
15 bit of wording in there; Special Issue #1 is just like
16 the guilt and innocence phase of the trial in that the
17 State is required to prove to you -- prove that issue to
18 you beyond a reasonable doubt.

19 Look at the -- there is some wording
20 there on the second line, that word "probability?"

21 A Yes.

22 Q "Probability" is defined in Texas law as "more
23 likely than not" and what I call just a little bit more
24 than 50/50.

25 A All right.

1 Q "More likely than not", is that -- would that
2 kind of go along with your personal definition of
3 "probability?"

4 A Yes.

5 Q Okay. And you could use that definition and
6 follow the law in that regard?

7 A Yes.

8 Q Okay. Down at the end of the second line it
9 talks about "criminal acts of violence."

10 We have got to prove to you beyond a
11 reasonable doubt that it's more likely than not that the
12 defendant would in the future commit criminal acts of
13 violence. You notice it doesn't just say "criminal acts"
14 because there are things like forgery or theft or things
15 like that --

16 A Yes.

17 Q -- that are crimes but they are not violent
18 crimes?

19 A Right.

20 Q But it also doesn't say "capital murder", we
21 are not required to prove to you that he would commit
22 another capital murder, just that he would commit some
23 criminal act of violence, assault, attempted murder,
24 rape, something of that nature?

25 A Yes, sir.

1 Q Then on the last word there is that word
2 "society."

3 "Society" means different things to
4 different people but the way the law in Texas describes
5 society, it means people everywhere and that means people
6 on the street, people in their home, people in the
7 penitentiary so we are not required to prove to you that
8 he would be -- that he would commit criminal acts of
9 violence, you know, in -- out on the street or in our
10 homes or in the penitentiary?

11 A Right.

12 Q Just that he would commit criminal acts of
13 violence somewhere no matter where it is.

14 Are you with me on that?

15 A Yes. I am.

16 Q Now, if you will read Special Issue #2 and then
17 we will talk about it.

18 A All right.

19 Q Okay. Mr. Thurman, Number Two whereas on guilt
20 or innocence the State has to prove that to you beyond
21 a reasonable doubt, Special Issue #1 we also have to
22 prove to you beyond a reasonable doubt, however, in
23 Special Issue #2 that's not a deal where we have to prove
24 it to you beyond a reasonable doubt or anything like
25 that. That is basically just your opinion.

1 A Okay.

2 Q It's basically, what it's asking you, is this
3 a death penalty type case or death penalty type defendant
4 or is there something there that reduces his blame to the
5 point that -- not that he's not responsible for it but
6 does it reduce his blame to the point that you believe
7 that he deserves a life sentence rather than the death
8 penalty?

9 And the word, the key language in there
10 is probably where it talks about sufficient mitigating
11 circumstances, circumstances in what is sufficient.

12 I think most people describe
13 "sufficient" as meaning "enough?"

14 A Right.

15 Q What is sufficient is strictly up to you, up
16 to your opinion after you have heard all that evidence
17 during the guilt or innocence phase and you have heard
18 all this evidence during the punishment hearing is there
19 something in there, whether it come from this side of the
20 table or that side of the table, is there something in
21 there that makes you feel like his blame has been reduced
22 to an appropriate level that he should receive a life
23 sentence rather than the death penalty?

24 Do you believe -- here's the important
25 part, so far as following the law we have had -- I have

1 had jurors say, "Okay. I found this person guilty of
2 capital murder, I am automatically going to answer 'Yes'
3 or 'No' on Issue #1 and Issue #2 because I want to be
4 sure that he gets the death penalty."

5 But you see, they are not following the
6 law because the law says you can't make up your mind yet,
7 you can't decide his guilt and have your mind made up
8 what your answer to Special Issue #1 and Special Issue
9 #2 is because you haven't heard the punishment evidence
10 yet, you have got to listen and consider all that
11 evidence.

12 You don't have to close your mind to
13 this guilt or innocence evidence, what you heard there,
14 you know, you can consider that and you can also consider
15 and you should also consider that evidence at the
16 punishment hearing then make your decision on Special
17 Issue #1.

18 Could you basically wait and hear all
19 that evidence and consider it before deciding what your
20 answer was on Special Issue #1?

21 A Yes.

22 Q And again when you got to Special Issue #2
23 that's a separate question and you need -- would need to
24 go back and reconsider all that evidence from the first
25 of the trial on through the punishment hearing before

1 deciding what you believe the appropriate answer should
2 be to Special Issue #2.

3 Could you do that?

4 A Yes.

5 Q Okay. Another thing is in capital murder the
6 law in this case would say that if the defendant was
7 found guilty and given a life sentence he would be
8 eligible for parole at the end of 35 years.

9 Now, that's not to say he would receive
10 parole, you know, he might receive it at that time, he
11 might not ever receive parole but it's just all we can
12 tell you and all that we know is that he would be
13 eligible at that time but I believe the Court's
14 instruction to you before you deliberated your punishment
15 in this case, I believe the Court's instruction to you
16 would state that when deciding the answer to Special
17 Issue #1 and Issue #2 that this decision should be based
18 strictly on the evidence.

19 And when I say "strictly on the
20 evidence" I mean parole cannot be a consideration when
21 you are deciding whether your answer should be "Yes" or
22 "No" on these issues. You have got to basically just
23 consider that a life sentence is a life sentence and the
24 death penalty is the death penalty and decide Number One
25 and Number Two based on the evidence that you have heard

1 throughout the trial.

2 Could you do that?

3 A Yes.

4 Q Okay. I will talk to you a little bit about
5 the mitigating evidence that you might hear; as I said
6 earlier you might hear evidence that the defendant was
7 intoxicated, you might hear evidence that the defendant
8 was young or old or had a good family history or bad
9 family history, you might hear evidence of all sorts of
10 things, you might hear evidence of retardation.

11 The important thing about that evidence
12 from the standpoint of being a qualified juror you have
13 got to be -- in order to be qualified you have got to be
14 the type juror who is willing to listen and consider all
15 that evidence.

16 Now, once you have listened to it and
17 considered it you should and are certainly free to make
18 your own decision as to whether, "Well, this witness's
19 testimony is" -- either you might decide that witness was
20 important or unimportant or truthful or untruthful or,
21 you know, you might decide that that evidence is
22 mitigating or you might decide that it wasn't.

23 You might say, "Well, I think that
24 reduces his blame" or "I don't think that reduces his
25 blame", whatever you decide is fine so long as you are

1 willing to listen and consider the evidence before making
2 your decision.

3 Could you do that?

4 A Yes, sir.

5 Q When I say that, some people have biases or
6 prejudices against certain types of witnesses, some
7 people in a capital murder case might not want to hear
8 from the defendant's mother or they might not want to
9 hear from a psychologist.

10 A Right.

11 Q Or they might not want to hear from any number
12 of ministers or whoever it might be.

13 And if you listen to these people and
14 consider their evidence and decide that that is not
15 important that's fine as long as you can follow the law
16 and listen and consider it before making that decision.

17 Could you do that?

18 A Yes. I could.

19 Q Let me talk to you just a little bit about just
20 some basic law that relates to capital murder cases but
21 also relates to most any criminal case.

22 A All right.

23 Q The punishment range in capital murder, we have
24 already talked about the punishment range, in a regular,
25 just a plain murder is five years probation to 99 years

1 or life of course that regular murder or plain murder is
2 any number of different type acts, it could be a very
3 vicious type murder?

4 A Yes, sir.

5 Q It could be a situation where an 85 year old
6 man has begged his wife to pull the plug because he's
7 dying of cancer and he's in a great deal of pain, if she
8 does that and pulls that plug that's murder.

9 Now, of course that's an entirely
10 different kind of murder than what we normally think of
11 but anyway the murder statute in Texas has a broad range
12 of punishment and in -- to be a qualified juror you have
13 to keep an open mind as to what the proper punishment
14 should be in just a regular murder case, whether that
15 proper punishment, now, you though as a juror, you can
16 decide what the proper punishment should be and you can
17 decide all the way from 99 years to five years probation?

18 A Yes.

19 Q But to be qualified you have to be able to
20 consider that full range of punishment before making your
21 decision.

22 Could you consider the full range of
23 punishment?

24 A Yes.

25 Q That would be from five years probation, you

1 could consider that and you can consider the 99 or life
2 or anywhere in between?

3 A Right.

4 Q In a capital murder case and, well, let's just
5 say we have got a capital murder case and the allegations
6 are murder and robbery, let's say, for instance, that we
7 have sought to prove that to you and the State has proved
8 to you beyond a reasonable doubt that a murder -- that
9 the defendant committed murder, we -- but that we did
10 not quite prove to you beyond a reasonable doubt that the
11 defendant committed the robbery.

12 Since we charged him by that indictment
13 with murder and the robbery you would have to find him
14 not guilty of capital murder but guilty of murder because
15 that is all we have proved.

16 And murder is kind of a lesser included
17 offense of capital murder.

18 In that situation you would be bound by
19 your oath to find him not guilty of capital murder but
20 guilty of murder, could you do that?

21 A Yes.

22 Q Okay. And would that -- that would also be the
23 case if you -- for some reason we made a mistake and we
24 alleged murder and robbery and we should have alleged
25 murder and arson, we proved murder but of course we

1 didn't prove the robbery, it was arson, that goes back
2 to our burden of proof?

3 A Right.

4 Q Could you still find him guilty of murder but
5 not capital murder because we didn't prove it?

6 A Because he wasn't tried on the right thing?

7 Q All right. Right. Okay.

8 Same thing in capital murder and murder,
9 it can be proven that the person knowingly cause another
10 person's death or it can be proved that they
11 intentionally caused another person's death but in
12 capital murder it has to be intentional.

13 Let's say that we proved to you that the
14 murder was committed, we proved the robbery to you beyond
15 a reasonable doubt and we proved the murder to you but
16 we only proved that he did it knowingly, we didn't prove
17 that he did it intentionally as we had in our indictment.

18 You, under your oath you would have to
19 find the defendant guilty again of murder but not capital
20 murder?

21 A Right.

22 Q Could you do that?

23 A Yes. That -- that would be kind of hard for
24 me but, you know, I'm just trying to be fair. Yes. I
25 would.

1 Q Okay. The burden of proof in any criminal case
2 is beyond a reasonable doubt as you know and that's not
3 beyond all doubt but that is a burden that we accept and
4 burden that we are use to.

5 Is that something that you are familiar
6 with from watching TV or from whatever other source, is
7 that familiar?

8 A I am familiar with it, I am, you know --

9 Q Along with that burden of proof resting with
10 the State it also goes that the Defense has no burden of
11 proof, they don't have to prove that the defendant is
12 innocent or that he's not guilty, we have got to prove
13 that he is guilty.

14 Do you agree with that?

15 A Yes.

16 Q Okay. Along with that goes the Fifth Amendment
17 privilege.

18 The Fifth Amendment of the United States
19 Constitution basically says that a defendant does not
20 have to testify in a criminal case unless he chooses to.

21 And when we say that what that really
22 means is that we have to prove our case and you can't
23 hold it against the defendant in any way if he doesn't
24 get up there and testify.

25 A Yes.

1 Q Can you do that?

2 A Yes.

3 Q And that also holds true through the punishment
4 phase, you know, that sometimes people might think, why,
5 you know, I would like him to get up there and say he's
6 sorry.

7 He doesn't have to. The Fifth Amendment
8 says he doesn't have to testify at all?

9 A Right.

10 Q So you have got to make your decision on
11 Special Issue #1 and Issue #2 based on the evidence that
12 is presented and not hold it against the defendant in any
13 way if he chooses not to testify because there may be
14 various reasons why he might make that choice.

15 Could you do that?

16 A Yes.

17 Q I think you understand that we -- what you have
18 been looking at up there earlier was the indictment, I
19 think you understand the indictment in a criminal case
20 is not evidence of guilt?

21 A Right.

22 Q And that indictment is strictly a charging
23 instrument.

24 And you won't hold that against the
25 defendant in any way, would you?

1 A No.

2 Q Okay. In many criminal cases something that
3 comes up is the voluntariness of statements the defendant
4 may sign or may give, some sort of confession where the
5 defendant has -- to make a long story short, just
6 basically said, "Yeah. I did it."

7 Under the law if there was such a
8 statement or confession presented in Court the Judge
9 would instruct the jury that they couldn't consider that
10 confession in any way unless they first found beyond a
11 reasonable doubt that it was both voluntary and truthful.

12 Okay. The question is this; if you
13 heard a confession, it was presented in Court, that you
14 believed beyond a reasonable doubt that it was truthful
15 but you legally did not believe beyond a reasonable doubt
16 that it was voluntary because it was a situation where
17 the defendant should have been read his Miranda Rights
18 for instance?

19 A Yes.

20 Q Are you familiar with Miranda Rights?

21 A Yes, sir.

22 Q The right to remain silent, the right to have
23 a lawyer present and that sort of thing?

24 A Yes, sir.

25 Q Let's say it was a situation where the

1 defendant should have been read his Miranda Rights but
2 he wasn't.

3 Then legally that confession is not
4 voluntary.

5 Are you with me?

6 A Yes.

7 Q Even though you believe almost beyond a
8 reasonable doubt in your mind the confession is truthful?

9 A Yes.

10 Q But it's not legally voluntary.

11 The Court will instruct you that you
12 cannot consider that confession in any way in deciding
13 guilt or innocence.

14 Could you do that?

15 A Yes.

16 That's another one that would be -- it
17 would be hard for me to do but that is something that I
18 would make myself do because it would be, you know, to
19 be fair.

20 Q Okay. Mr. Thurman, what we run into is in
21 situations like that no human being can be expected to
22 put that out of their mind.

23 A Right.

24 Q But the Court does expect you to be able to
25 just put that aside while you are deliberating and

1 consider only that evidence that has legally been
2 presented to you.

3 A Yes, sir.

4 Q And you could do that?

5 A Yes.

6 Q Mr. Thurman, you indicated to the Judge you
7 knew a little bit about the facts of this case and from
8 what you said to the Judge it seemed like you didn't know
9 a whole lot about the facts of the case but you did know
10 a little, my question to you is, you are going -- if you
11 are selected as a juror in this case you would be under
12 oath to make your decision strictly on the evidence that
13 was presented.

14 And when I say that, anything that you
15 may have read in the newspaper, seen on TV --

16 A Yes, sir.

17 Q -- heard at the coffee shop, that is not
18 evidence and you can't consider that in any way in
19 determining the guilt or innocence of this defendant or
20 determine what his punishment should be.

21 A Yes.

22 Q Would you be able to do that?

23 A Yes.

24 Q Okay. You indicate that you knew of me,
25 anything about that that would cause you to be less than

1 fair in this case?

2 A No. No. Just heard the name, that's all.

3 Q Okay. You indicated that you had -- in your
4 questionnaire I notice that you indicated that there were
5 -- you had relatives that had been involved or were
6 involved in police work?

7 A Yes.

8 Q In a criminal case you will hear testimony from
9 all sorts of witnesses, you might hear testimony from
10 psychologists, ministers, criminals, police officers, you
11 know.

12 A Yes.

13 Q Any number of different types of people.

14 The important thing is that you give
15 everyone a fair start.

16 A Yes.

17 Q And not start anybody out, any witness out
18 ahead of another one just because he's of a particular
19 profession or because he's a police officer?

20 A Like if he's a police officer. Right.

21 Q Or because he's someone you know or something
22 of that nature.

23 Do you believe that you could do that?

24 A Yes.

25 Q Now, when I say that I notice on Page 10 of

1 your questionnaire it -- I think the Judge has a copy of
2 it there.

3 THE COURT: Yes.

4 It has been 30 minutes.

5
6 (Handed to the potential juror.)

7
8 MR. TOWNSEND: If you will
9 look at the bottom of Page 10 it says --

10 THE POTENTIAL JUROR: Yes.

11 Q (BY MR. TOWNSEND) -- "Do you have any personal
12 feeling about law enforcement in general or police
13 officers in particular?"

14 And said, "If yes, please explain, most
15 of the time I would believe the word of a police
16 officer?"

17 A Yes.

18 Q You have been around and had -- related with
19 police officers over the years, I am sure you are aware
20 that there are good police officers and there are bad
21 police officers?

22 A Yes.

23 Q There are good police officers or bad police
24 officers either one, they can be in situations where they
25 are correct or they can also make a mistake?

1 A Yes.

2 Q And the important thing to be a qualified juror
3 you have got to be able to take each witness, listen to
4 their testimony, consider their testimony and then decide
5 whether that testimony is truthful, important,
6 unimportant, not critical.

7 Could you do that?

8 A Yes.

9 Q Even as to a police officer?

10 A Yes.

11 What I meant by this is most of -- just
12 what I said, most of the time I believe the word of a
13 police officer.

14 Q Let me ask you this; when you say "Most of the
15 time you would believe the word of a police officer",
16 most of the time I believe what somebody tells me unless
17 I have got some reason not to.

18 A Right. Right.

19 Q Is that the way you are with most everybody?
20 you generally believe them until you have reason not to
21 or unless there's something that bothers you about what
22 they are saying?

23 A Right. Yes. If there's something that --

24 Q Just doesn't add up?

25 A Right.

1 Q Okay. My basic question boils down to this;
2 you are going to hear all kinds of testimony from all
3 kinds of people and some of those people will be police
4 officers, are you going to start those police officers
5 out before you have ever heard anything they say, when
6 they walk in the courtroom because they have got a police
7 uniform you are going to say, "Well, I automatically
8 believe them more than I do the rest of them?"

9 A No.

10 Q Okay. Mr. Thurman, I have been asking
11 questions and I have been doing lots of talking and I
12 haven't let you talk a whole lot.

13 Is there anything that you would like
14 to ask me?

15 A On the jury when the people, you know, what is
16 it, 11 jurors?

17 Q "Twelve."

18 A "Twelve?" Okay. "Twelve."

19 When they vote on these things is it
20 like a majority or how does that --

21 MR. TOWNSEND: I'm going to
22 let the Court --

23 THE POTENTIAL JUROR: -- how
24 does that go?

25 THE COURT: In order to find

1 a person guilty it must be unanimous, all 12 of you have
2 to agree in order to answer that question "Yes" all 12
3 of you must agree.

4 THE POTENTIAL JUROR: Yes.

5 THE COURT: It can't be
6 answered, the first issue can be answered "No" with 10
7 or more but "unanimous" is the requirement for a "Yes."

8 "Yes" is the one that gets the death
9 penalty.

10 THE POTENTIAL JUROR: Okay.

11 THE COURT: So if you are --
12 then on the last issue, the second issue.

13 THE POTENTIAL JUROR: Yes.

14 THE COURT: It would have to
15 be a "No" results in the death penalty, that would have
16 to be unanimous.

17 THE POTENTIAL JUROR:

18 "Unanimous?" Okay.

19 THE COURT: Frankly I have not
20 looked up the law as to Number Two but I still suspect
21 it could be answered with 10 "Yes", if you answer "Yes"
22 but to find a person guilty and assess the death penalty
23 it must be unanimous, all 12 must be -- must agree.

24 THE POTENTIAL JUROR: Then if
25 it's not unanimous does it go to -- would be to what,

1 "life imprisonment" or just --

2 THE COURT: You all ask some
3 good questions down here.

4 THE POTENTIAL JUROR: Did I
5 ask a stupid question or what?

6 MR. TOWNSEND: No.

7 THE COURT: I was trying to
8 decide whether or not the law would allow me to answer
9 it but I'm going to answer it anyway because I believe
10 it does; in order to find a person guilty it's unanimous.

11 Now, if a person is found guilty of
12 capital murder the law says the punishment would be life
13 so you can't come up with a verdict on the second part
14 of the trial, since the minimum punishment is life the
15 net effect of a hung jury is a life sentence but before
16 you get to that second part you have to have the
17 unanimous agreement.

18 If it's not unanimous on the first part
19 it's a new trial.

20 THE POTENTIAL JUROR: Okay.

21 THE COURT: Mr. Townsend?

22 THE POTENTIAL JUROR: That's
23 all the questions.

24 THE COURT: You don't have any
25 more questions?

1 THE POTENTIAL JUROR: No.

2 THE COURT: Good.

3 MR. TOWNSEND: That was a good
4 question.

5 Well, I have got one more; is there any
6 reason that you know of that you couldn't be a fair and
7 impartial juror in this case?

8 THE POTENTIAL JUROR: No.

9 MR. TOWNSEND: I pass the
10 juror.

11

12 VOIR DIRE EXAMINATION

13 BY MR. OLD

14

15 Q Mr. Thurman, I represent Mr. Wardlow, I guess
16 you would call me "Act II" of this.

17 And we are going to talk about basically
18 the same questions of law that you just talked about.

19 A All right.

20 Q The first thing I would like for you to be
21 aware of is that a juror takes an oath, and I would like
22 to tell you what that oath is and have you consider it.

23 A Okay.

24 Q A juror is required to swear or to affirm that
25 he would "a true verdict render according to the law and

1 the evidence so help you God."

2 Now, the Court, and that's the Judge,
3 is the exclusive judge of the law of this case. I mean
4 two lawyers can't even agree on what the law is, someone
5 has to tell a jury what the law is.

6 A Right.

7 Q And the Court does that by giving you a set of
8 written instructions we sometimes call a "charge" and it
9 tells you what the law is. They tell -- it tells a jury
10 the rules to conduct themselves by and in many cases what
11 they shall do or what they should not do or how they will
12 go about it.

13 Now, the jury is the exclusive judge of
14 the evidence by the standards set by the law and that's
15 usually anything you find as evidence or to exist in fact
16 you must find beyond a reasonable doubt.

17 A Right.

18 Q Okay. Now, you and Mr. Townsend talked a lot
19 about "beyond a reasonable doubt", what does that mean
20 to you?

21 A That there is a -- I don't know, a very high
22 probability.

23 Q "High probability" is what the word indicates
24 to you?

25 A Right.

1 Q Now, when the law says that the word has legal
2 meaning the Court will give you a -- in its charge a
3 definition of that word and if you will look at, I
4 believe it's Exhibit 6 in front of you.

5 THE COURT: That's it.
6 (Indicating)

7 THE POTENTIAL JUROR: Okay.

8 MR. OLD: Start with the
9 second paragraph on that, begins, "The prosecution has
10 the burden of proving", can I get you to read and study
11 the rest of that page so we may talk about it?

12 THE POTENTIAL JUROR: Okay.
13 All right. All right.

14 Q (BY MR. OLD) Court will tell you that's the
15 definition of beyond a reasonable doubt and tell you to
16 be governed thereby.

17 A Yes.

18 Q Can you follow that instruction?

19 A Yes.

20 Q Does that instruction in your mind differ from
21 what you said as being a "high probability?"

22 A Not really.

23 Q Okay. Obviously it doesn't say the same thing
24 but I mean is there a real variance?

25 A It says "beyond a reasonable doubt."

1 Q Now, over in Special Issue #1 you are asked to
2 find beyond a reasonable doubt that there is a
3 probability.

4 I believe the District Attorney told you
5 that "probability" there meant "more likely than not?"

6 A Yes.

7 Q Is "beyond a reasonable doubt" a higher
8 standard than "more likely than not?"

9 A I would say no. To me.

10 Q Okay. You would say that a reasonable doubt
11 would simply -- be a high probability, would be more
12 likely than not?

13 A Yes. No. No. No. I'm sorry. I'm sorry.

14 I got that backward. I'm sorry.

15 Q Okay.

16 A No. I am just contradicting myself here.

17 No. A reasonable doubt would be a
18 higher standard.

19 Q It's a higher standard than a mere probability?

20 A Yes.

21 Q And does that question say to you that the more
22 likely than not must be proven to you beyond a reasonable
23 doubt?

24 A Yes.

25 Q Do you have any quarrel with that, any problem

1 with that being the law?

2 A No.

3 Q Now, just as the oath implies you have got to
4 be able to follow the law.

5 If you and I talked long enough we would
6 find a law that you would say "That's wrong, that's not
7 the law, I can't follow that law."

8 A Like "seat belts" or something?

9 Q That's a good one: "I don't care if you got
10 a videotape, I'm not going to find a man guilty of not
11 wearing his seat belt, I think it's his personal choice?"

12 A Right.

13 Q You know there are some things we can't do and
14 I want to go back over with you some things and if I
15 understood your answer correctly you said there are some
16 things that would be hard to do?

17 A Yes.

18 Q The first thing I want to talk to you about;
19 your grandfather was B.C. Sustaire?

20 A Yes, sir.

21 Q He was Chief of Police in Mount Pleasant for
22 as long as I can remember.

23 A Right.

24 Q You have got an uncle who was chief of police?

25 A Eulless.

1 Q "Eulless?" What is his name?

2 A "Blackie Sustaire."

3 Q He has been a law enforcement officer forever?

4 A Right.

5 Q Then you have got another relative?

6 A His son is a captain if I'm not correct over
7 there and I have got an uncle that is, I think a
8 detective or something in Greenville.

9 Q Okay. Did you kind of grow up around law
10 enforcement officers?

11 A Yes. Mainly around my grandfather.

12 Q And your uncle from time to time?

13 A Right.

14 Q I want to challenge you on something, I'm not
15 trying to prove you wrong, say you told me wrong, I got
16 to know the answer; you wrote down on your questionnaire
17 that "Most of the time I would believe the word of a
18 police officer?"

19 A Right.

20 Q I'm not saying there's anything wrong with that
21 but going to whether or not you're a proper juror for
22 this case?

23 A Okay.

24 Q There's a Witness List in front of you, it's
25 a piece of paper that has "Witness List" on top of it.

1 (Indicating)

2 A Yes.

3 Q Would you go over that Witness List for me and
4 tell me if you know any of those people and I will also
5 call your attention to the fact that a lot of them appear
6 to be law enforcement officers.

7 When you get to one you know or heard
8 of I'm going to stop there if you do.

9 A I have heard of "Jackie Martin."

10 Q When you say "I heard of?"

11 A I have heard of him, other than that -- I have
12 heard some of these names but I don't know anybody
13 personally.

14 Q Have you heard of them as being "He's a deputy
15 sheriff in Daingerfield" or "He's a policeman in
16 Pittsburg", is that how you have heard of them?

17 A I couldn't even really tell you what he does.

18 Q All right.

19 A I mean I have just heard the name. That's all.

20 Q Okay.

21 A And I don't think I have even heard any of the
22 other ones on here, maybe some of these right here.

23 (Indicating)

24 Q Have you gone over to the next page?

25 A No. Okay.

1 I can't even say I have even heard of
2 any of these names before.

3 Q You do know a lot of those people on there are
4 law enforcement officers?

5 A Right. I take your word for it.

6 Q Are they represented to be by that list?

7 A Okay.

8 Q You are not -- this requires that you make your
9 findings on the evidence that comes to you through the
10 Court, it's just like we talked about what you heard
11 about this?

12 A Right.

13 Q You have got to lay it aside and not consider
14 it.

15 A Right.

16 Q You said that you could do that.

17 Let me give you a hypothetical; a law
18 enforcement officer testifies, a non-law enforcement
19 witness testifies, just a witness, not saying -- maybe
20 the State calls them both, maybe the Defendant calls one
21 and the State calls the other and vice versa.

22 A All right.

23 Q And a law enforcement officer testifies in
24 contradiction to the other witness; holding everything
25 equal between the witnesses is the mere fact that one of

1 them is a law enforcement officer, is that going to be
2 more persuasive with you?

3 A Yes. The law officer, I would have to say,
4 would be more persuasive to me.

5 Q Merely because of the fact that he's a law
6 enforcement officer?

7 A Yes.

8 I wouldn't, now, I don't want to put any
9 law enforcement officer's opinion in front of anybody
10 else's. I would try to hold, you know, all the evidence
11 equal but, you know --

12 Q But I mean if you had to make a decision and
13 that was the only thing out there to make it on it would
14 probably make a difference?

15 A Yes, sir.

16 Q As you were raised around law enforcement
17 officers I was raised around lawyers.

18 A Yes.

19 Q And I would probably consider a lawyer more
20 credible if a lawyer was a witness.

21 A Right.

22 Q But what you are saying is a law enforcement
23 officer is going to have a head start with you as a
24 witness, he's going to have some instant credibility
25 because of that position?

1 A He would have credibility.

2 I wouldn't put it above anything else
3 but he would have credibility. Yes. Because he was law
4 enforcement.

5 Q It's going to be something that you would
6 consider in weighing the evidence in this case?

7 A Right.

8 MR. OLD: Your Honor, may we
9 approach the bench?

10 THE COURT: Mr. Thurman, if
11 you would step out for a minute. I need to talk to these
12 lawyers for just a second, we need to bring you right
13 back in.

14

15 (Off the record discussion.)

16

17 THE COURT: Bring him back in.

18

19 (The following occurred in the presence
20 and hearing of the potential juror:)

21

22 THE COURT: The record can
23 reflect there was an off the record discussion between
24 the parties while the juror was out of the room.

25 Mr. Thurman, you have a background in

1 law enforcement, at least your family does?

2 THE POTENTIAL JUROR: Yes.

3 THE COURT: You told the State
4 during questioning that you would not start a police
5 officer out ahead of another witness, you would basically
6 look at all the witnesses and decide --

7 THE POTENTIAL JUROR: Right.

8 THE COURT: -- who you
9 believe?

10 Now, you have told Mr. Old something a
11 little different, you have told him that you do believe
12 all things being equal that a police officer is more
13 credible.

14 Now, there is nothing wrong with which
15 way you view things, you have told me two different
16 things, maybe you meant to, maybe you didn't mean to.

17 THE POTENTIAL JUROR: I
18 probably misunderstood -- just didn't -- I don't know how
19 to explain myself.

20 THE COURT: Let me go a little
21 further; you know at trial a person's very freedom and
22 life can be at stake and our law says that all the
23 witnesses should be started equal, now, that doesn't mean
24 at the end they are all equal, if you have a doctor on
25 the stand and he gives testimony about how a certain

1 operation occurs based on his training you might very
2 well find him more credible than you would me telling
3 somebody how I think an operation ought to be performed
4 since I have absolutely no medical training or
5 background. And there's nothing wrong after you hear the
6 qualifications to give a person more credibility than
7 another but if you are going to say that you will always
8 believe a person because of his or her profession over
9 anyone else not in that profession then that is wrong.
10 If you are going to say that you will never believe
11 somebody because of their profession that's wrong.

12 The law wants us to be able to listen
13 to the witnesses, start them out basically equal then
14 judge their credibility based on what you hear. And what
15 you hear has to do with how are they trained, what are
16 they trained to do and what is their areas of expertise,
17 if any, and how does this apply to fact situation?

18 A policeman may be more trained in
19 observation than a non-policeman but if you have a doctor
20 get up here again and talk about how an operation is to
21 progress and the policeman says, "No. I don't think
22 that's the way it ought to go" and he has had no training
23 I don't believe that you should necessarily believe this
24 policeman because he's a policeman.

25 THE POTENTIAL JUROR: Right.

1 THE COURT: There's nothing
2 wrong in it if that's the way you feel, if you are going
3 to start a policeman out and always believe everything
4 he says regardless then that is fine. You just need to
5 tell us.

6 THE POTENTIAL JUROR: I
7 wouldn't always believe a policeman regardless of what
8 he said.

9 THE COURT: You would or would
10 not?

11 THE POTENTIAL JUROR: Would
12 not.

13 THE COURT: So are you telling
14 me that you will listen to his testimony and then decide
15 whether you would believe it?

16 THE POTENTIAL JUROR: Yes.

17 THE COURT: Some people say,
18 "Oh, if a policeman gets up there and is testifying I'm
19 going to believe everything he says, I'm not going to
20 have any other witness."

21 THE POTENTIAL JUROR: That's
22 not true. That shouldn't be like that. That's not true
23 for me.

24 THE COURT: So you are telling
25 me you might hear a policeman testify and you might or

1 might not believe him, it depends on what he's going to
2 say?

3 THE POTENTIAL JUROR: Right.

4 THE COURT: The importance of
5 this, Mr. Old is obviously not going to be presenting as
6 many police personnel as the State might.

7 THE POTENTIAL JUROR: Right.

8 THE COURT: So he does not
9 need to be put at a disadvantage by having to discredit
10 all of these policemen because in your eyes they are a
11 step ahead over everybody else, that creates an
12 impossible burden. He -- he has no burden of proving
13 anything so if he has to prove that all of them are just
14 not credible you are making him do something that the law
15 does not make him do.

16 If you hear a policeman and you just
17 don't believe him can you discount his testimony?

18 THE POTENTIAL JUROR: Yes.

19 If I don't believe him. Yes.

20 THE COURT: And if you believe
21 him can you find -- if you believe him find him credible,
22 can you give effect to his testimony?

23 THE POTENTIAL JUROR: Yes,
24 sir.

25 I think what I meant by that was say I

1 was out on the street and I asked a policeman something
2 and, you know, he told me, I would believe what he says.

3 THE COURT: For purposes of
4 this conversation we want you to try to confine your
5 thinking to what you would do here because each witness
6 is sworn in and they give an oath to tell the truth.

7 THE POTENTIAL JUROR: Yes.

8 THE COURT: Whether they do
9 or not is something for a jury to decide. And you may
10 not have people lying to you, you may have people that
11 actually remember things differently in a trial and that
12 doesn't mean that one person is lying and the other isn't
13 but it does mean if you have that situation you are going
14 to have to decide which one you believe.

15 THE POTENTIAL JUROR: Right.

16 THE COURT: And that's when
17 you judge their credibility, what does that person do
18 that says this, what is their background and so on,
19 that's when you judge their credibility and for you to
20 say "I am always going to believe the policeman over
21 anybody else on the witness stand because he's a
22 policeman", it's inappropriate.

23 It's not inappropriate for you to
24 believe but as a juror it's inappropriate just because
25 he's a policeman. It's not inappropriate for you to feel

1 that way, if you believe that way tell me.

2 THE POTENTIAL JUROR: I don't
3 believe that way.

4 THE COURT: Mr. Old?

5 MR. OLD: Mr. Thurman, to be
6 sure I understand you; a witness gets on that witness
7 stand that has a badge on or uniform that you recognize
8 as a policeman?

9 THE POTENTIAL JUROR: Right.

10 Q (BY MR. OLD, CONTINUING VOIR DIRE EXAMINATION)

11 As he is taking that witness stand is
12 your mind-set going to be, I want to hear him testify
13 because I believe policemen tell the truth, I mean is he
14 -- as to people that -- just plain old people is he going
15 to have a little head start with you, are you going to
16 anticipate looking forward to his testimony because you
17 believe it would be coming as the truth?

18 A No.

19 Q Well, --

20 A Can I ask a question?

21 Does it sound like I'm saying two
22 different things here?

23 Q It does to me.

24 A Okay.

25 Q And I'm not -- you made a strong statement on

1 your questionnaire and I'm not saying you are retracting
2 or hedging on me.

3 A Right.

4 Q I mean I may be -- I'm sitting there looking
5 at your relationship with law enforcement and I mean a
6 family heritage, obviously?

7 A Just because I have law enforcement in my
8 family, though, I mean that doesn't effect, you know, how
9 I think.

10 I know there are good police officers
11 and bad police officers.

12 Q But let me change it; you presume, and I think
13 you said "most police officers?"

14 A Yes.

15 Q Do you presume most police officers are
16 truthful?

17 A Yes. I would presume that it would be their
18 job to be truthful, you know, they probably don't tell
19 the truth all the time but --

20 Q I'm not talking about "all the time", I'm
21 talking about when they are in the courtroom under oath.

22 A Okay.

23 Q Is the fact, the mere fact that they are a
24 peace officer, I'm not talking about an opinion about
25 whether a fingerprint is a fingerprint, something they

1 have knowledge of, I'm talking about just as to "The car
2 was red, the car was red, the car was black, I saw him
3 do it, I didn't see him" or "This was said, that was
4 said?"

5 A That has no -- it's hard -- hard for me to
6 explain myself.

7 Just because he's a police officer, no,
8 that doesn't effect the way that I would listen about,
9 you know, what he says about something like that.

10 Q Let me give you a hypothetical; a police
11 officer testifies that he had a conversation with the
12 person charged.

13 A Right.

14 Q "He says this, the defendant said this."

15 The defendant then gets on the witness
16 stand and testifies, "No. I said this" or "The
17 conversation never occurred."

18 Now, the fact that the witness was a
19 peace officer going to give him greater credibility than
20 the other witness? Are you going to be more likely to
21 believe him?

22 A Yes, sir. It's going to give him more
23 credibility.

24 Q And that's solely because he's a peace officer?

25 A I guess so. I can't think of any other reason.

1 Q And for me to bring his credibility down with
2 you I'm going to have to attack him and show you that he
3 is wrong or is not telling the truth?

4 A Yes. I think I would have to have evidence
5 that he was not telling the truth.

6 Q Okay. As to the defendant; would it have to
7 be proven to you that he was telling the truth?

8 A Yes. I would want to know that he was telling
9 the truth.

10 Q And based on what you have told me the mere
11 fact the other witness was a peace officer, you will
12 probably take his word over the defendant?

13 A If that's what I said I guess that's what I
14 said.

15 Q Do you agree with me that's what you said?

16 A Yes.

17 Q Let's go on to something else; over on the
18 first page of your questionnaire you were asked to
19 explain your answer as to your opinion of the death
20 penalty.

21 First; have you always had the same view
22 about the death penalty or has it changed from time to
23 time?

24 A I think I have had the same view on it.

25 Q Okay. You make the statement "If a person is

1 found guilty of capital murder he should be put to
2 death?"

3 A Yes.

4 Q Okay. And that's if all of these Special
5 Issues are -- okay, let me challenge you.

6 A If he's found guilty. Yes.

7 Q If he's found guilty of capital murder it's
8 proven to you beyond a reasonable doubt that in the
9 indictment you have read he intentionally killed a person
10 during the commission of a robbery he should be put to
11 death?

12 A Yes.

13 Q And that's your opinion of what should be done?

14 A Yes, sir.

15 Q It may not be the law.

16 A That is the law, isn't it?

17 Q Well, when you find him guilty then the law
18 asks you to answer some other questions.

19 A Yeah. If the other questions are answered
20 correctly. Yes.

21 Q But when you filled this out you weren't
22 considering this Special Issue, you were just saying if
23 a person was convicted of capital murder he should get
24 the death sentence?

25 A Yes.

1 Q That's your opinion, what you think the law
2 ought to be?

3 A Yes, sir.

4 Q Now, Mr. Townsend explained to you this morning
5 in order for someone to get the death penalty after you
6 find them guilty beyond a reasonable doubt of capital
7 murder you must answer "Yes-No" to two questions?

8 A Yes.

9 Q And you must answer those questions on
10 evidence, right?

11 A Yes.

12 Q Now, your opinion of what the law ought to be
13 and that is that -- not trying to put words in your
14 mouth, what it says to me, "If you are convicted of
15 capital murder there ought not to be two questions, it
16 ought to be the death penalty?"

17 A I think my view on that has changed a little
18 bit since I found out about these other questions. Now
19 that I know about these you got here the Special Issue
20 #1 and Issue #2 I don't think they should be put to death
21 until those are answered correctly.

22 Q Well, let me --

23 A Did I answer?

24 Q You answered the question, the problem I'm
25 having with that in a short time you have changed your

1 opinion.

2 A That's because I didn't know about this other.

3 Q But you still have a strong -- you still
4 strongly favor the death penalty in a capital murder
5 case?

6 A Yes.

7 Q Okay. Would the fact that you consider that
8 -- that you have a bias in favor of the death penalty in
9 a capital murder case, I'm not trying to be ugly but this
10 indicates that you really think the death sentence is the
11 more appropriate sentence?

12 A Yes.

13 Q Okay. Is that opinion going to effect your
14 answer to Issues One and Two?

15 A No.

16 Q Okay. You can lay that opinion aside and
17 answer those questions --

18 A Right.

19 Q -- on the evidence and not look to the outcome?

20 A I can try my best.

21 Yes. I think I could.

22 Q Let me ask you something; do you think that
23 your opinion as to the death sentence in capital cases
24 can effect others -- effect you in general in your
25 deliberation and viewing the evidence in this case?

1 I'm not saying you want to kill someone,
2 you just think if they committed capital murder the
3 punishment ought to be death?

4 A No. I think during the trial what I would be
5 interested in is just hearing the evidence to see if they
6 are guilty or not guilty of it.

7 Q After that?

8 A Okay.

9 Q Maybe we missed something.

10 A Okay.

11 Q You hear the evidence in the case and you go
12 out and you find "guilty-not guilty", if you find the
13 defendant not guilty of capital murder then the death
14 penalty is never considered and you never see Special
15 Issue #1 and Issue #2?

16 A Right.

17 Q Okay. Let me put you in the position of you
18 are on a jury and you have answered Special Issue #1 --
19 Special Issue Number -- excuse me; you have found the
20 defendant guilty of capital murder?

21 A Okay.

22 Q Come back out, the jury gets back in the
23 courtroom, more evidence may be presented?

24 A Right.

25 Q You then go, after you hear that evidence and

1 with new instructions of the Court you answer Special
2 Issue #1 and Issue #2?

3 A Okay.

4 Q Now, at the point that you have found a man
5 guilty of capital murder are you of the opinion that he
6 ought to get the death penalty unless he's proven to you
7 otherwise?

8 A Not yet. Not at that point.

9 Q Are you favoring that outcome?

10 You found him guilty of capital murder,
11 are you --

12 A I favor it but that, you know --

13 Q I mean you lean that way?

14 A No.

15 Really I would like to say I don't lean
16 either way until, you know, until you hear the other
17 evidence about if he was in his right mind, if something
18 was, you know --

19 Q But I mean I think you have given me two
20 answers.

21 A Oh, okay.

22 I seem to be good at that today.

23 Q Listen, don't -- the advantage that Mr.
24 Townsend and I have over you, we are not going to be on
25 the jury.

1 A All right.

2 Q We are asking you to predict what you are going
3 to do before you do it and I know these are extremely
4 hard answers but the law says we are entitled to them and
5 this is not a game we are playing to battle wits with
6 you.

7 A Yes.

8 Q Let me go back, I think you told me that after
9 you convicted somebody of capital murder but before you
10 went further with hearing evidence as to Issues One and
11 Two that you would not automatically be wanting to give
12 him the death penalty but you would lean that way or you
13 would have a bias that way?

14 It would be more likely than not that
15 you thought he ought to get the death penalty?

16 A Yes.

17 Q I mean you would be over that -- just as soon
18 as you convicted him you would be at 50 percent or above
19 on the death penalty more likely than not?

20 A Yeah.

21 Q That's what you would think the appropriate
22 punishment would be?

23 A Yes. That's what I would think the appropriate
24 punishment would be. Right.

25 Q Then in answering Special Issue #1 would you

1 preference weigh in your decision on that issue?

2 A No. I don't think it would.

3 Does that tell you anything?

4 Q I don't like the word "think", I understand the
5 word "think."

6 Let me ask you; are you telling me "I
7 would do my best not to, I think I could follow the
8 instruction of the Court but I really don't know whether
9 I could or not?"

10 A No. I would follow the instructions of the
11 Court and I could do that.

12 Q And you think you could put that completely out
13 of your mind, that is your preference for the death
14 penalty in a capital case?

15 A Yes. I would put it out of my mind while --
16 I mean that's, you know, that would be something that
17 would be hard for anybody to put their preference out of
18 their mind but to be fair, yes, I would put it out of my
19 mind.

20 Q You will try to put it out of your mind?

21 A Yes. I would try.

22 Q You know it's real easy to say "Yeah, I'm not
23 going to consider that, I'm going to consider that, I'm
24 sitting right over here and I'm not going to look back
25 that way", that's being real objective?

1 A Yes.

2 Q Now, when you get to "subjective" and that is
3 what is in here in your mind, when you are weighing that
4 evidence is your preference going to subjectively effect
5 your weighing of the evidence as to Special Issue #1 or
6 Issue #2?

7 A I would have to say I guess it would.

8 Q Okay.

9 THE COURT: Let me see if you
10 just said what I heard.

11 THE POTENTIAL JUROR: Okay.

12 THE COURT: Your preference
13 is at the point that he's talking, your personal views
14 indicate to you that death is appropriate, forgetting the
15 law, "Death is the appropriate sentence?"

16 THE POTENTIAL JUROR: Right.

17 THE COURT: Then it seems to
18 me what you just said, your viewpoint, that death would
19 be appropriate would influence the way you answer the
20 issues, is that what you said?

21 THE POTENTIAL JUROR: I think
22 subconsciously, yes, it probably would.

23 But that is something that I would try
24 to put aside to the best of my ability.

25 THE COURT: Well, I have to

1 agree with Mr. Old, we can't take "try" or "I think."

2 THE POTENTIAL JUROR: Okay.

3 THE COURT: Obviously there
4 may be a lot of things in your mind and you can't just
5 forget something, the problem is not whether you put it
6 out of your mind, the problem is whether it would
7 influence your answer and you said it would.

8 And again, I don't take quarrel with
9 you, I just want to understand.

10 He has a position, he has a position,
11 I am the referee, I am calling the balls and the strikes
12 and for me to do it I have got to get a better picture
13 of where the ball is being played so if you have an
14 opinion that the death penalty is the appropriate
15 punishment, would influence your decision that's fine,
16 if it wouldn't influence your decision that's fine, I
17 just want to know one way or the other, "Yes, it will"
18 or "No, it won't?"

19 THE POTENTIAL JUROR: I would
20 think that I would have to say "Yes, it would."

21 THE COURT: Okay. Thank you,
22 sir.

23 Would you step out of the room for just
24 a minute?
25

1 (Off the record discussion.)

2
3 (The following occurred outside the
4 presence and hearing of the potential juror:)

5
6 THE COURT: On the record now,
7 Mr. Old?

8 MR. OLD: My first challenge
9 would be that the witness has expressed such a bias for
10 the infliction of the death penalty as a punishment for
11 capital murder and by his answer that that bias would
12 effect his deliberation on punishment that that is a
13 prejudice against this defendant and against this case
14 and the statement that he cannot follow the law.

15 THE COURT: I will sustain
16 your challenge for cause.

17 I find him to be not qualified.

18 Tell him we appreciate him coming down
19 and he is being released.

20
21 (Record closed for November 15th, 1994.)

22
23 (Whereupon Court was recessed until 9:00
24 a.m., November 16th, 1994.)

25 *****

I, Lloyd E. Billups, CSR #149 and
Official Court Reporter in and for the 76th Judicial
District, State of Texas, do hereby certify that the
above and foregoing contains a true and correct
transcription of the proceedings in the above-styled and
numbered cause, all of which occurred in open court or
in chambers on November 15, 1994 and were reported by me.

WITNESS MY HAND this 31st day of
January, 1995.

LLOYD E. BILLUPS, CSR, #149
OFFICIAL COURT REPORTER
76TH JUDICIAL DISTRICT
MT. PLEASANT, TEXAS

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